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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 254

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,

Appellants,

v.

S. B. STREET, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR APPELLEES, S. B. STREET, NANCY M. LOOPER, HAZEL E. COBB, J. H. DAVIS, MRS. EDNA FRITSCHEL, MRS. ELIZABETH FERGUSON, AND OTHERS SIMILARLY SITUATED

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March 16, 1960

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Opinions Below

The opinion of the Supreme Court of Georgia (R. 24 270)[1] here on appeal is reported at 215 Ga. 27, 108 S.

[1] The transcript of Record printed for the use of this Cou will be so cited. The printing of the entire record on appeal this case would have cost in excess of $100,000. Consequentl the parties entered into a stipulation designating certain portio of the record to be printed, and providing that "each [part consents to any of them referring in brief or oral argument the Supreme Court of the United States to the portions of t record certified to said Court that have not been printed." Re erences to unprinted pages of the official transcript on file wi this Court will be "Tr.—" followed by a further page citati where a transcript page contains a document with more than o page.

2d 796 (1959). An earlier opinion by the Suprem
of Georgia in the same case is reported *sub nom.*
et al. v. *Georgia Southern & Florida Railway Co*
at 213 Ga. 279, 99 S. E. 2d 101 (1957). The findin
clusions, order, judgment and decree of the trial co
Superior Court of Bibb County, Georgia (R. 101-1
not reported.

Constitutional Provisions and Statutes Involv

In addition to the statutory provisions quoted i
lants' brief, the following Amendments to the Unite
Constitution are involved in this case:

Amendment I.

"Congress shall make no law respecting a
lishment of religion, or prohibiting the free
thereof; or abridging the freedom of speech, o
press; or the right of the people peaceably to a
and to petition the Government for a redress o
ances."

Amendment V.

"No person shall be held to answer for a ca
otherwise infamous crime, unless on a present
indictment of a Grand Jury, except in cases a
the land or naval forces, or in the Militia,
actual service in time of War or public dang
shall any person be subject for the same offen
twice put in jeopardy of life or limb; nor shall
pelled in any criminal case to be a witness
himself, nor be deprived of life, liberty, or p
without due process of law; nor shall private p
be taken for public use, without just compensa

Amendment IX.

"The enumeration in the Constitution, of
rights, shall not be construed to deny or di
others retained by the people."

Amendment X.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Questions Presented

The major question presented to the Court for decision is:

May unions, under cover of a union shop contract authorized by the Railway Labor Act, force minority employees to *accept* and *pay for* political and ideological representation by unions whose views are repugnant to and opposed by such minority employees?

Subsidiary questions are:

(1) Did this Court's decision in *Railway Employees' Department* v. *Hanson*, 351 U. S. 225 (1956) reserve judgment on the constitutional issues here presented as it expressly stated?

(2) Are the wide-ranged political and ideological activities of appellant unions "germane to collective bargaining"?

(3) Is the application of the union shop contract to individual appellees[1] governmental action affecting their constitutional rights in view of the statutory authorization to negotiate such a contract and the intervention of government agencies in encouraging and providing enforcement machinery for, that contract?

(4) Are the individual appellees deprived of their constitutionally-protected political freedom and freedom

[1] The phrase "individual appellees" will be used herein to denote not only the six individuals specifically named as appellees but also the class represented by them consisting of all other employees of the Southern Railway System similarly situated (R. 166-167), unless the context requires otherwise.

of association by being forced to choos
jobs and compulsory contribution to t
their political foes?

(5) Are the individual appellees dep
constitutionally-protected freedoms of s
by being compelled to contribute to
views which are repugnant to them?

(6) Are the funds extracted from indiv
under the union shop contract used to
ical conformity"?

(7) Are the individual appellees depriv
stitutionally-protected right to work b
to choose between their jobs and compu
tion to the program of their political
foes?

(8) Are the individual appellees dep
property without due process of law
pelled to contribute to the advanceme
and ideological objectives which are repu

(9) Have the appellants been deprived
due process in the courts below?

Statement of the Case[1]

This case involves two union shop cont
in their relevant terms (R. 205-217), betwee
making up the Southern Railway Syste
sometimes referred to as "the railroad")
unions (hereinafter referred to as the "app
nated under the Railway Labor Act ("the
sent the nonoperating employees of the So
for collective bargaining purposes. The

[1] This statement is made as "concise" as seems
regard to this Court's Rules. Because of the ex
the record, and the consequent necessity for s
adequate resumé of it, a more complete summ
ceedings and evidence below is set forth in the
brief. The Court is urged to examine that sum
tively complete outline of the proceedings and evi

signed February 27 and April 1, 1953, to be effecti
15, 1953, and are referred to herein as "the uni
contract" or "the union shop agreement."

The union shop contract provides in substance
nonoperating employees shall, "as a condition of th
tinued employment" by the railroad, become mem
the union "representing their craft or class with
(60) calendar days of the date they first perfor
pensated service as such employes after the effect
of this agreement, and thereafter shall maintain
ship in such organization" (R. 205-206).

On June 5, 1953, this action was commenced
14) in the Superior Court of Bibb County, Georgia,
(1) an injunction against the railroad and the ap
to prevent enforcement of the union shop contra
(2) a declaration that the union shop contract is
unconstitutional, null and void.

The action was brought by certain individuals as
action on behalf of "all those employees or form
ployees of the railroad defendants affected by and
to the union shop agreement who also are oppose
use of the periodic dues, fees and assessments wh
have been, are and will be required to pay to
ideological and political doctrines and candidates
islative programs . . . or for other purposes oth
the negotiation, maintenance and administration o
ments concerning rates of pay, rules and worki
ditions, or wages, hours, terms or other condit
employment or the handling of disputes relating
above" (R. 167).

The "similar situation" in which the members
class find themselves is typified by the named
Mr. S. B. Street. As alleged in the amended
(R. 74):

> "Petitioner S. B. Street is an employee of
> fendant New Orleans and Northeastern Railro
> pany, with seniority rights dating from Nove
> 1917. Plaintiff Street at all times since the e

of the union shop agreement has
said railroad defendant in positio
agreement, his present assignment
eral Clerk. Plaintiff Street lives
city of Hattiesburg, Mississippi.

"Under the terms of the unio
plaintiff Street was required as
tinued employment against his w
protests, in April, 1957, to join the
hood of Railway and Steamship C
dlers, Express and Station Emplo
that organization a reinstatement
He has been required as a conditi
ployment since that date to pay t
$2.25 per month to June, 1958, a
since June, 1958. The total amo
Street has been required to pay u
agreement as a condition of con
aggregates $154.50, as of the date
amendment."

The petition as amended alleged, a
(R. 75), that "the dues, fees and asse
individual appellees "are and will be re
the terms of the union shop agreeme
used in substantial part by the labo
to support financially candidates for
petitioners and the class they repres
support, and to oppose candidates fav
and the class they represent." It was
such dues, fees and assessments had
used "in substantial part to propagat
nomic ideologies espoused by the labo
fendants, but which are repugnant to
the class they represent", and to attemp
tiffs and the class they represent" t
and to "induce plaintiffs and the clas
vote for and otherwise support the can
the unions and "to finance and otherw
active and expensive political organizat

as been employed by
tions covered by said
ent being that of Gen
es and works in the

nion shop agreement,
s a condition of con-
wishes and over his
he defendant Brother-
Clerks, Freight Han-
ployes, and to pay to
nt fee and back dues.
ition of continued em-
y to such organization
and $3.00 per month
mount which plaintiff
under the union shop
continued employment
te of the filing of this

l, among other things
ssessments" which the
required to pay under
ement are and will be
abor union defendants
for public office whom
resent do not wish to
favored by petitioners
as further alleged that
ad been and would be
gate political and eco-
labor organization de-
to the petitioners and
empt "to convert plain-
" to such "ideologies"
class they represent to
candidates favored by"
herwise maintain large,
nizations working vigor-

ously to support candidates, principles, doctri
ideologies repugnant to petitioners and the cl
represent" and "to disseminate through printed
propaganda media political and economic views,
by petitioners, in an effort to convert to those vie
bers of the general public, including railroad e
and employees of other businesses." As amended,
tion also sought a money judgment (R. 83-84).

The individual appellees further allege (R.
"the activities hereinabove referred to" are "not
to the collective bargaining activities of the labo
zation defendants, are not reasonably incident the
are not necessary thereto."

After numerous procedural steps, the trial c
missed the case on motion by appellants (R. 219) fo
to state a cause of action (R. 221). Upon ap
Georgia Supreme Court reversed and remanded
for trial, saying in part (*Looper* v. *Georgia So*
Florida Railway Co., 213 Ga. 279, 284-285, 99 S. E
(1957)):

> "We go now to the single point raised w
> Supreme Court has, we believe, clearly ind
> still open for decision. The petition of these n
> employees alleges that they have been notifi
> cordance with the law and the contract of em
> that unless they become members of a unio
> 60 days their employment will be terminate
> alleged that the union dues and other payme
> will be required to make to the union will
> to 'support ideological and political doctrines
> didates' which they are unwilling to suppor
> which they do not believe, and that this wil
> the First, Fifth and Ninth Amendments of th
> tution. While *Railway Emp. Dept.* v. *Han*
> U. S. 225, *supra*, upheld the validity of a clo
> contract executed under § 2, Eleventh, that
> clearly indicates that that court would not a
> requirement that one join the union if his
> tions thereto were used as this petition all

is there said (headnote 3c): 'Judgment is *reserved* [italics ours] as to the validity or enforceability of a union or closed shop agreement if other conditions of union membership are imposed or if the exaction of dues, initiation fees or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First or Fifth Amendments.' We must render judgment now upon this precise question. We do not believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes. We believe his right to immunity from such exactions is superior to any claim the union can make upon him."

The evidentiary record in the trial court consists of a comprehensive stipulation of facts (R. 165-217), numerous depositions (R. 108-152), two requests for admissions and responses thereto (R. 277-323), all contained in the printed record, and a third request for admissions and responses thereto, 588 documentary exhibits submitted by both parties, and certain items read into the record by consent, none of which are printed here for the reasons explained above, *supra*, p. 1, n. 1.

Among other things, the stipulation of facts establishes (R. 176):

"The periodic dues, fees and assessments which plaintiffs, intervening plaintiffs and the class they represent, have been, are and will be required to pay under the terms of the union shop agreement hereinabove referred to, have been, are being, and will be used in substantial part for purposes other than the negotiation, maintenance, and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above, but to support ideological and political doctrines and candidates which plaintiffs, intervening plaintiffs, and the class represented by them, were, are, and will be opposed to and not willing to support voluntarily."

The stipulation further sets out (R. 176 *ff.*) the precise "mechanism by which the periodic dues, fees and assessments required to be paid under the terms of the union shop agreement were, are and will be used in substantial part to support ideological and political doctrines and candidates for public office which plaintiffs, intervening plaintiffs, and the class represented by them, are not willing to support".

Included with the appellant unions in this "mechanism" are the following:

1. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to which each of the appellant unions belongs and to which each appellant union pays a per capita tax amounting to 5¢ per month from funds paid in by members in the form of periodic dues, fees and assessments (R. 177, 178, 317-318).

2. The Committee on Political Education (COPE) of the AFL-CIO (R. 135-152 and 319).

3. The Department of Legislation of the AFL-CIO (R. 126-131).

4. The Railway Labor Executives' Association (RLEA) to which all of the appellants belong, through their chief executive officers, and whose chief activity is in the field of federal legislation (R. 179, 180-181).

5. Railway Labor's Political League (RLPL) composed of the chief executive officers of appellants and other labor organizations (R. 182-184).

6. The Nonpartisan Political League of the International Association of Machinists (MNPL) (R. 193-195).

7. "LABOR", the weekly newspaper published by Railway Labor's Cooperative and Educational Publishing Society, of which all but one of the appellants are part owners (R. 189-191).

As will be seen in the stipulation and voluminous other evidentiary materials of record, the foregoing "mechanism" is used to pour vast sums of money into political campaigns and lobbying activities on the federal, state and local levels, such funds being channeled through RLPL (R. 182-188); MNPL (R. 192-198); COPE (R. 131-152, 277-299, 315); "LABOR" (R. 189-191); RLEA (R. 179-181); and the AFL-CIO Department of Legislation (R. 125-131). The foregoing are merely representative record references, as the record contains a great amount of evidence of the political, legislative and propaganda activities of the appellants through these and other agencies. A more complete summary is contained in the Appendix to this brief.

On the basis of the voluminous and undisputed evidence of record showing the use by appellants of the funds exacted, and to be exacted, from the individual appellees for political and ideological purposes, the trial court found, among other things (R. 103-104) that:

1. Such funds "have been, and are being, used in substantial amounts . . . to support the political campaigns of candidates for the offices of President and Vice President of the United States, and for the Senate and House of Representatives of the United States, opposed by plaintiffs and the class they represent, and also to support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public offices, opposed by plaintiffs and the class they represent."

2. Such funds "have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent."

3. Such funds "have also been and are being used in substantial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, con-

formity to those doctrines, concepts, ideologies and programs".

4. Such exaction and use of funds are "not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents".

5. The unions "by their commingling of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities set forth above have made it impossible to segregate the amount of dues collected from plaintiffs and the class they represent which are and will be used for collective bargaining purposes from those which are and will be used for the complained of purposes and activities set forth above".

6. "Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State, and are contrary to the statutes or laws of other states in which the defendant railroads operate."

7. "Said exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which in the First, Fifth, Ninth and Tenth Amendments thereto guarantees to individuals protection from such unwarranted invasion of their personal and property rights (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their political freedom and rights) under the cloak of federal authority."

Accordingly, the trial court (R. 105-106) permanently enjoined enforcement of the union shop agreements as to the individual appellees and the class they represent so long as appellants continue to engage "in the improper and unlawful activities described". The trial court also declared (R. 106) Section 2, Eleventh of the Railway Labor Act to

be "unconstitutional to the extent that it permits, or applied to permit, the exaction of funds from plaintiffs a the class they represent for the complained of purposes a activities", and to that extent declared the union sh agreements null and void as violating "the above-mentior personal rights guaranteed by the Constitution of United States and the laws and policy of this State a other States as set forth above." The Court also orde repayment of dues, fees and assessments previously p by the individual appellees.

The Supreme Court of Georgia affirmed (R. 249), say among other things (R. 269):

> "One who is compelled to contribute the fruits his labor to support or promote political or econor programs or support candidates for public office just as much deprived of his freedom of speech as he were compelled to give his vocal support to doctri he opposes. Abraham Lincoln asserted a similar vi when he said: 'I believe each individual is natura entitled to the fruits of his labor, so far as it in wise interferes with any other man's right.' There a common saying, that 'Money talks—sometimes loud than the spoken word.' In the case at bar, the perso convictions of the plaintiffs on political and econor issues are being combatted by the use of their financ contributions to foster programs and ideologies wh they oppose."

The case was appealed to this Court (R. 271-275), pr able jurisdiction being noted on October 12, 1959 (R. 27

Summary of Argument

I A. In *Railway Employees' Department* v. *Hanson*, 351 U. S. 225 (1956) this Court expressly reserved decision as to whether employees forced to join a railroad union pursuant to a union shop contract authorized by Section 2, Eleventh of the Railway Labor Act (45 U. S. C. § 152, Eleventh) could also be forced, under cover of the union shop contract, to contribute to support the union's political or ideological activities with which they disagree. The Court made this reservation by pointing out (351 U. S. at 235) that "The financial support required relates . . . to the work of the union in the realm of collective bargaining" and that if charges were "in fact imposed for purposes not germane to collective bargaining, a different problem would be presented." The Court further said that the use of "compulsory membership . . . to impair freedom of expression" was a problem "not presented by this record." The Court promised that "If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." It is absurd to argue, as appellants do, that this Court in *Hanson* ruled *sub silentio* and by implication on the grave constitutional issues here involved. without evidence on the subject, and while the Court was solemnly saying that it was reserving such issues for later unprejudiced decision. Here, for the first time, the Court is presented with *evidence* of *specific* political and ideological uses of funds exacted under the union shop contract from specific employees who oppose the ideas and candidates for which their money is being used by the unions. The Court can properly rule on vital constitutional issues such as are here involved "only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is

not enough." *United Public Workers* v. *Mitchell* 75, 89-90 (1947). The "actual interference" absent in *Hanson* is present here and requires t "judicial authority".

I B. Appellants say, in effect, that everythi in the political and ideological fields is, in a ge for the benefit of the working man, and therefor to collective bargaining" within the meaning of t phrase in the *Hanson* case. Such a contention, i would render meaningless the Court's phrase a reservation of judgment on constitutional iss nothing could be foreign to collective bargainin lants' activities relative to control of off-shor price supports, foreign aid, and the like, are to it. Appellants' present contention is belied by stipulation (R. 191) that their political activiti involve and are unnecessary to the negotiatio nance and administration of agreements concer of pay, rules and working conditions, or wages, h and other conditions of employment, or the h disputes relating to the above." Can activities be to collective bargaining which "do not involv unnecessary to" it? Even as to matters which m benefit the laborer, the unions are not engaged i *collective bargaining*—negotiations *with the emp collective contract*—when they use *totally differ* such as legislation, to attain the desired obje legislative history and judicial interpretation o way Labor Act and related statutes show conclu "collective bargaining" is limited to the *employe* relationship and does not extend to various oth whereby the laboring man may express or bene Congress has no constitutional power to requi ployee to *accept* and *pay* his "collective bargai sentative" as also his political and ideological s

II A. The union shop contract is authorized b way Labor Act, was encouraged and virtually

governmental agencies, and is enforcible through gov
mental tribunals; and therefore it represents governme
action affecting the constitutional rights of minority
ployees under the Bill of Rights. This Court held in
Hanson case (351 U. S. at 231-232) that the union s
contract is governmental action, as it has "the imprim
of the federal law upon it and, by force of the Supre
Clause of Article VI of the Constitution, could not be n
illegal or vitiated by any provision of the laws of a Sta
Thus, since federal law is supreme and no state law c
challenge it, the presence or absence of contrary state
is immaterial. Even so, the Georgia courts have ruled
union shop contract as here applied to be contrary to
law of Georgia, and that judicial declaration of Geo
law, together with the right-to-work statutes of other st
must be overridden by Section 2, Eleventh of the Rail
Labor Act in order for the union shop contract to be e
tive. That contract is a manifestation of federal powe
the further respects that (1) it arises from the uni
statutory authorization (comparable to "legislative" pow
to bind unwilling minorities to a collective contract (*St*
v. *Louisville & N. R.R.*, 323 U. S. 192, 204 (1944); *Amer*
Communications Ass'n v. *Douds*, 339 U. S. 382, 401
(1950)); (2) it results from an electoral process a
lutely and unreviewably controlled by a federal age
(*Smith* v. *Allwright*, 321 U. S. 649 (1944); *Switchm*
Union v. *National Mediation Board*, 320 U. S. 297 (194
(3) it effectuates a governmental policy (*Railway*
ployees' Dept. v. *Hanson*, *supra*); (4) it results from
ernment-imposed duties and powers of the union to ba
with the employer; (5) the government itself interve
through the National Mediation Board and a Presiden
Emergency Board, to encourage if not to compel the sig
of the union shop contract; and (6) the contract depe
on federal tribunals for its enforcement (*Brotherhoo*
Railroad Trainmen v. *Chicago River & Indiana R.R.*,
U. S. 30 (1957); *Slocum* v. *Delaware L. & W. R.R.*,

U. S. 239 (1950); *Shelley* v. *Kraemer*, 334 U. S. 1
Barrows v. *Jackson*, 346 U. S. 249 (1953); and
Alabama, 326 U. S. 501 (1946)).

II B 1. Use of the union shop contract to co
nority employees to contribute to the support of
views and candidates which are repugnant to them
them of their constitutional right to political freed
Court has repeatedly recognized that "political rig
"political freedom" are protected by the First, Fift
and Tenth Amendments to the Constitution. *Unite
Workers* v. *Mitchell*, *supra*; *American Commu
Ass'n* v. *Douds*, *supra*; *Sweezy* v. *New Hampshire*,
234 (1957). These rights have also been referre
protected as the rights of "political belief and asso
Watkins v. *United States*, 354 U. S. 178, 188 (19
*tional Association for Advancement of Colored
State of Alabama*, 357 U. S. 449 (1958). When th
use funds extracted from the minority to broad
amplify views repugnant to the minority, the di
voice of the latter is rendered inaudible. Even s
strictions on political freedom and freedom of as
have been condemned. *Wieman* v. *Updegraff*, 344
(1952). No impairment can be tolerated since politi
dom is vital to the "integrity of our electoral proc
not less, the responsibility of the individual citize
successful functioning of that process." *United
United Auto Workers*, 352 U. S. 567, 570 (1957).

II B 2. The use of dues taken forcibly from
employees to support beliefs and candidates wh
wish to oppose deprives the minority of their const
rights to freedom of speech and press. "To compe
to furnish contributions of money for the propag
opinions which he disbelieves, is sinful and tyr
Statute of Virginia for Religious Freedom (1786
erty of speech and of writing is secured by the
tion, and incident thereto is the correlative li
silence, not less important nor less sacred." *W*

Georgia, C. & N. Ry., 94 Ga. 732, 22 S. E. 579 (1893). forcing minority employees to speak through the loud c lective voice when they wish to remain silent or supp views which conflict with the views of the union, the pellants discourage individual expression, enforce sta ardization of ideas (*Terminiello* v. *City of Chicago*, U. S. 1, 4 (1949)), and impose intellectual peonage. Su action is analogous to forcing "citizens to confess by wo or act their faith" in tenets which they disbelieve. W *Virginia State Board of Education* v. *Barnette*, 319 U. 624, 642 (1943). Pecuniary encouragement or discoura ment of expression—and particularly of political expr sion—through governmental action is unlawful. *Spei* v. *Randall*, 357 U. S. 513 (1958). And to force expressi of political beliefs is as clearly unconstitutional as to fo expressions of religious belief. *Everson* v. *Board of Ed cation*, 330 U. S. 1 (1947); *Thomas* v. *Collins*, 323 U. 516, 531 (1945). In other areas, such as the fields of ta tion, radio and television, and in the Corrupt Practi Act, Congress itself has recognized the need for avoidi direct or indirect gov rnmental interference with politi expression. The argument of appellants that compulso state bar association membership is analogous to the pr ent case is wholly unsound. No decision has been cited, can be found, which holds or even suggests that an in grated bar could engage in political activities such as th of the appellant unions.

II B 3. Appellants say that their activities, financ with funds exacted from minority employees, could no result in "forcing ideological conformity" within the mea ing of this Court's phrase in the *Hanson* case since ployees are always free to believe what they wish no mat what they are told or how forcefully, guilefully or repe tiously they are told it. However, the record shows th the minority employees are forced to purchase subscr tions to the unions' publications which bombard them w political and ideological propaganda. This is analogous

the repetitious reading of the Bible in sch
condemned in *Schempp* v. *School Distric*
Township, Pa., 177 F. Supp. 398, 404-406 (E
where the court said: "The argument mad
dants that there was no compulsion ignor
the forces of social suasion." This Court ha
power of government may not be used to
gious beliefs—even on a nondiscriminatory
lum v. *Board of Education*, 333 U. S. 203
biased political and ideological propaganda
"captive audience"—the conscripted membe
—through the exercise of governmental a
propaganda is intended to be, and is, effecti
ful wording and endless repetition.

II C. By compelling the minority emplo
between their constitutionally-protected
(*Greene* v. *McElroy*, 360 U. S. 474, 492 (19
right to political freedom and freedom of sp
association, the union shop contract operate
employees' right to work. Government ma
"qualification" on the right to work which h
connection with the applicant's fitness or ca
form the job (*Schware* v. *Board of Bar*
U. S. 232, 238-239 (1957)) or which is "arb
criminatory" (*Wieman* v. *Updegraff*, *supra*
is no "rational connection" between the p
exacted of the minority employees and their
to work for the railroad. The requirement
to support political and ideological views wh
is "arbitrary and discriminatory" and a pla
their right to work.

II D. The exaction of union dues from
ployees to propagate political doctrines a
litical candidates repugnant to them repres
tion of property without due process of l
v. *Consolidated Gas Utilities Corporation*,
79-80 (1937). A state could not require

individual citizens contribute to a particular
party; and it could not condition the right to wo
engage in business on such a contribution. When th
use governmental power to compel membership a
dition of the right to work, they cannot then use
ship dues to support a political party, or othe
engage in politics. If they wish to engage in polit
ideological programs, they must obtain their finan
untarily, and not through government compulsion.

III. Appellants have no basis for their claim
procedures followed in the Georgia courts depriv
of due process. For the most part, their proced
jections relate to routine matters clearly within th
discretion of the courts below, and no prejudice
from any procedures. The claim that appellan
harmed because the litigation was processed as
action" is without merit, and flies in the face of ap
stipulation (R. 166-167) that the class was appropri
properly represented, and that employees represe
all appellants were included in the class.

ARGUMENT

I.

The *Hanson* case expressly reserved for futu sion the constitutional question here presented.

Section 2, Eleventh of the Railway Labor Act, a
by Act of January 10, 1951, 64 Stat. 1238, 45 U. S.
permitting execution of union shop contracts
railroad employees, was considered by this Court fo
ago in the case of *Railway Employees' Department*
son, 351 U. S. 225 (1956). In view of the relevance
decision to the issues here presented, and in view
appellants' persistent misunderstanding of that
it is necessary to clarify by way of introduction w
case *did* decide, and what the Court there *did not* c

The *Hanson* case presented a broadsi
tack on Section 2, Eleventh of the Ra
There the union shop agreement had no
and the plaintiffs sought to avoid joining
ing that the Act was beyond the commer
gress, in conflict with the "right to work
Nebraska constitution, and in violation o
association, the non-members obtained a
tion in the Nebraska state court, based
Section 2, Eleventh was unconstitutional.

On appeal, this Court reviewed the his
of the Act, and concluded that Congress
under the Constitution to require the be
lective bargaining to contribute to its co
been attempted here", wrote Mr. Justice
jority of eight. "The only conditions to
authorized by §2, Eleventh of the Railway
payment of 'periodic dues, initiation fees,
The assessments that may be lawfully in
clude 'fines and penalties.' The financial
relates, therefore, to the work of the unio
collective bargaining" (351 U. S. at 235)
course, that the decision of the Nebras
roneous, and that the Nebraska law's guar
to work was validly superseded. Mr. Ju
concurred in a separate opinion.

The Court made clear that it was ruling
road employee could be required to contr
of the cost of collective bargaining, a s
union is by law obliged to afford. "We onl
quirement for financial support of the col
agency by all who receive the benefits of
the power of Congress under the Comm
does not violate either the First or the Fi
(351 U. S. at 238).

With respect to broad constitutional issues, M
Douglas, speaking for the Court, said (351 U.
238):

"*If 'assessments' are in fact imposed for pu*
germane to collective bargaining, a differe
would be presented.

"Wide-ranged problems are tendered unde
Amendment. • • •

"*On the present record,* there is no more a
ment of First Amendment rights than there
in the case of a lawyer who by state law i
to be a member of an integrated bar. *It is a*
compulsory membership will be used to impa
of expression. But that problem is not pr
this record. Congress endeavored to safegua
that possibility by making explicit that no co
membership may be imposed except as re
riodic dues, initiation fees, and assessments
conditions are in fact imposed, or *if the e*
dues, initiation fees, or assessments is used
for forcing ideological conformity or other
contravention of the First Amendment, this
will not prejudice the decision in that case. F
narrowly on §2, Eleventh of the Railway L
We only hold that the requirement for financ
of the collective-bargaining agency by all u
the benefits of its work is within the power o
under the Commerce Clause and does not vio
the First or the Fifth Amendments. We
opinion on the use of other conditions to
maintain membership in a labor organization
under a union or closed shop agreemen
added).

Mr. Justice Frankfurter in his concurring opi
(351 U. S. at 242):

"The Court has put to one side situation
before us for which the protection of the Fi
ment was earnestly urged at the bar. I, too,
to one side."

Despite the clarity of the language of both opinions quoted above, appellants now contend that the basic constitutional question at issue here was decided in *Hanson*. In the face of these express disclaimers they insist that the *Hanson* decision is a direct holding that unions constitutionally may use funds exacted from employees under a union shop agreement for political and ideological purposes opposed by such employees.

That is a most remarkable contention. It amounts to a charge that this Court ruled *sub silentio* and by implication on constitutional issues, which it recognized as being of gravest importance, in the admitted absence of any evidence as to the existence of the issues or of the manner in which any individual rights might be affected. And, appellants say, the Court did decide those very constitutional issues while solemnly reserving them for later decision, and while emphasizing the reassurance that "this judgment will not prejudice the decision in that case." We are confident that this Court did not thus lightly dispose of the fundamental human rights at stake in this case.

The *Hanson* record and opinion clearly show that the constitutional questions now before the Court are not foreclosed by *Hanson* but are expressly left open in that decision.

It is obvious that the Court meant to leave something open —but if the interpretation urged by the appellant unions were correct, nothing would be left open.

The appellants say (their brief, pp. 38-39), that the *Hanson* case holds "that *no* allocation of the actual use of initiation fees and dues need be made, but that they *would be* regarded as used for a purpose that 'relates' 'to the work of the union in the realm of collective bargaining' " as long as they are simply initiation fees and dues (italics added).[1]

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[1] The appellants conveniently ignore (their brief, pp. 40-41) the fact that the "allocation" to which Mr. Justice Douglas referred in the *Hanson* case was not "allocation" between costs of collective bargaining on the one hand and unrelated activities on the other. The reference is rather to the question whether the costs of col-

Appellants then say that only "assessments" were contemplated by the Court's reservation of judgment with respect to "purposes not germane to collective bargaining." If that were the correct interpretation of the Court's opinion, then obviously the reservation of the "different problem" concerning "assessments * * * for purposes not germane to collective bargaining" would be illusory. If "dues" can be used, without restriction, for any purpose, then the unions have a simple problem of nomenclature. By calling any increased charges "dues" they can avoid the necessity for making "assessments" and thus accomplish as many "purposes not germane to collective bargaining" as they see fit without creating a "different problem" which this Court would examine under the reservation in the *Hanson* case.

Clearly this Court did not intend to say that anything which the unions chose to call "dues" may be assessed against unwilling employees and be spent for any purpose, and with this Court's blessing as being related "to the work of the union in the realm of collective bargaining", while only those charges which the unions are willing to designate as "assessments" must be spent exclusively for collective bargaining. The Court certainly would not become so enmeshed in labels as the appellants suggest, and the Court would not offer such an illusion as purported "protection" for the minorities forced to contribute to the unions under the union shop contract.

The fact is that the Court has said quite plainly that "the financial support required" by the Railway Labor Act "relates, therefore, to the work of the union in the realm of collective bargaining," and that if the unions actually de-

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lective bargaining must be allocated to *each member* represented in accordance with his precise benefit from the work of the representative. Thus the opinion states (351 U. S. at 235): "The financial support required relates, therefore, to the work of the union in the realm of collective bargaining. No more precise allocation of union overhead *to the individual members* seems to us to be necessary" (italics added).

mand payments which are to be used "for purposes
mane to collective bargaining, a different problem v
presented."

Appellants similarly accuse this Court of off
snare and delusion in its promise that "if the exa
dues, initiation fees, or assessments is used as a c
forcing ideological conformity or other action in
vention of the First Amendment, this judgment
prejudice the decision in that case." As will be demo
in Part II of this brief, the unions actually are c
and using funds derived from minority employees
pair freedom of expression" and "enforce ideologi
formity" in the most effective manner which c
imagined short of a slave camp. Yet, appellants sa
brief, p. 40) that this is not "imposing conformi
in effect, that nothing could constitute the impair
"freedom of expression" or the forcing of "ideolog
formity" as long as all that the unions demand of
ployees "is that they pay the ordinary periodic d
initiation fees uniformly required of all membe
course, appellants themselves recognize that if th
pretation of the Court's reservation concerning
ideological conformity" and impairing "freedom of
sion" were correct, the reservation would be meanin
the appellants say (their brief, p. 40): "Indeed, if
dition other than the payment of 'ordinary perio
and initiation fees' is in fact imposed upon any e
then under the terms of the union shop agreeme
the agreement will not be applied to such employe

The statute itself prohibits discharge of an e
under the union shop contract for any reason ot
failure to pay "periodic dues, initiation fees and
ments," and this the Court specifically recognized.
Court said (331 U. S. at 238) that "if the exaction
initiation fees, or assessments is used as a cover fo
ideological conformity or other action in contrave
the First Amendment, this judgment will not preju
decision in that case." Clearly the Court was no

that no violation of freedom of speech would result so long as the unions simply demanded and collected "periodic dues, initiation fees, and assessments," regardless of the use made of funds thus exacted.

The Court did not create a mirage which will vanish into thin air when minority employees approach with evidence of impaired freedom of expression and of enforced ideological conformity. This case meets precisely the description of the Court's reservation of judgment in the *Hanson* case.

Appellants erroneously assert that the record in *Hanson* included materials relating to their political and legislative activities (appellants' brief, pp. 19, 37 *ff.*). The materials referred to there are merely (1) union constitutions, (2) excerpts from the legislative history of the Union Shop Amendment, and (3) arguments based on the above in Hanson's brief. None of those items in *Hanson* could be, or is, evidence of the *actual* exaction from an *actual* employee of sums *actually* used for political and ideological purposes which he opposes.[1]

In striking contrast, the evidence here is specific and direct, as will be shown below.

Appellants recklessly assert that, in overruling the Supreme Court of Nebraska, this Court "had before it for decision the precise issue decided by the court below" (appellants' brief, p. 38), and that the Nebraska Court was reversed "for doing just what the Georgia Court did, namely, enjoining enforcement of a union shop agreement because part of the fees and dues is used for political, legislative, charitable, and welfare purposes of which some employees may not approve" (appellants' brief, p. 41).

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[1] In *Hanson* the Union Pacific Railroad was enjoined by the state court from placing the union shop agreement into effect. Although the Southern Railway originally was enjoined from placing that agreement into effect (Tr. 33), the injunction was dissolved in early 1957 before the trial and some individual appellees were required then to become union members (R. 166, 203-204). Others have filed a supersedeas bond and would, of course, be required to pay back dues if their court action were to fail.

Appellants have not correctly interpreted, or
the holding of the Supreme Court of Nebraska, or
upon which the decision of that court was reverse

The Nebraska Supreme Court held that the U
Amendment violated the Bill of Rights to the
Constitution in two ways:

> (1) That Amendment infringed upon the
> of association protected by the First Am
> That infringement, in the eyes of the Nebras
> was found in the authorization[1] of agreeme
> compel employees to become members of
> ation (labor organization) against their will.
> 669, 71 N. W. 2d 526.[2]
>
> (2) That Amendment violated the due
> clause of the Fifth Amendment to the Unit
> Constitution in that it authorized an agree
> pelling covered employees to p y for ma
> besides the cost of collective bargaining;
> the agreement did not have a real and
> relationship to any legitimate object of Con
> legislation under the Commerce power. 160
> 71 N. W. 2d 526.

This Court concluded that full membership in
union appellants was not required by the union s
ment, and that only a formal membership evi
payment of periodic dues, fees and assessment
quired. Therefore, and on that basis, it found n
ment of the freedom of association protected by
Amendment, since the only "association" involve
ment of a *quid pro quo* for services rendered by
in collective bargaining. (See *e.g.*, 351 U. S. 23

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[1] The question of governmental action is discussed
section of this brief.

[2] The question of freedom of association was argued
Court by all parties (except Charles L. Bradford and
Allen, *et al.* as *Amici Curiae*) *only* on the basis that
the individual's right to join or not to join a labor un
the more subtle basis of political and ideological re
which the instant record presents.

As to the alleged violation of the due process clause the Fifth Amendment, this Court apparently felt that p ment of periodic dues, fees and assessments was a ya stick which Congress, acting under the Commerce Cla reasonably could select to measure the financial supp due the collective bargaining agency, the union, in the sence of a showing that charges are actually assessed " purposes not germane to collective bargaining" (351 U 235).

Those holdings in *Hanson* did not reach the quest whether a specific use of funds exacted under a un shop agreement from specific employees might be in vi tion of either the First or Fifth Amendment. Such situation is now before this Court for the first time.

We wish to make clear that we are not relitigating issue presented in the *Hanson* case. The Court there h that an employee could be compelled to contribute fin cially to the support of the *collective bargaining* activit of his collective bargaining representative. We beli that the Court in *Hanson* traced the outer limit of perm sible restriction of individual freedom of association a expression and the constitutionally-protected right to wo It is to be noted that, even on an international level, su individual freedoms and rights are recognized. Thus, in Universal Declaration of Human Rights adopted by General Assembly of the United Nations in 1948, it is p vided (Article 23, Section 1):

> "Everyone has the right to work, to free choice employment, to just and favorable conditions of wo and to protection against unemployment."

In the same international document it is further provid (Article 20):

> "1. Everyone has the right to freedom of peace assembly and association.
>
> "2. No one may be compelled to belong to an as ciation."

In *Hanson*, the Court plainly did not go beyond s
of forced association to the extent of *pro-form*
"membership"—that is, forced contribution of du
used for *collective bargaining*. To go beyond th
prescribed in *Hanson* and to force the minority e
to contribute to the support of ideologies and politi
didates which he opposes—as here confidently ad
by appellant unions—would unlawfully deprive hi
freedom of political association and activity and
dom of speech and press, while also depriving hi
property without due process of law.

**A. The Record in the *Hanson* Case, Unlike This Ca
tained No Evidence of Political and Ideological Ac
the Unions Supported by Forced Contribution
Minority Employees.**

Appellants argue that the Court in *Hanson* had
the "same type of evidence" as is in the record of t
(see appellants' brief, pp. 36-38). That statement i
incorrect as we shall show.

Appellants assert (brief, p. 37) that the record in
"showed that union dues were used to pay for subsc
to Labor", referring to the record in this Court
No. 451, October Term, 1955, p. 143, Exh. 10. B
reference is only to a provision appearing in the C
tion and By-Laws of the Brotherhood of Mainten
Way Employees. There was not in that case, as
here, a tracing of actual money from a specific e
through his local lodge to the national organizati
thence into "LABOR", culminating in the following
tions in the instant case (R. 189):

> "46. Each of the labor union defendants (ex
> Masters, Mates and Pilots and National Marin
> neers Beneficial Association) was and is a par
> of an organization known as Railway Labor's
> tive and Educational Publishing Society, whi
> lishes a weekly newspaper, 'Labor.' • • •

"47. 'Labor' derives its principal financial suppo from subscriptions to the newspaper without whi subscriptions none of its activities would be possible.

"48. The general funds of the labor union defe dants, except for the American Train Dispatche Association, have been, are, and will be used to pu chase subscriptions to 'Labor' for officers and membe of such labor union defendants. Such subscriptio constitute a substantial portion of 'Labor's' revenues

Appellants assert (brief, p. 37) that the record in *Hans* showed "that Labor issued special election editions urgi support of given candidates for public office", the sa record citation being given. But the only reference "LABOR" at that citation is to a provision in the sa Constitution and By-Laws of the Brotherhood of Maint nance of Way Employees:

"The weekly newspaper 'Labor' will be furnished Grand Lodge to all members in good standing wi the Grand Lodge."

On page 38 of their brief, appellants assert that Hanso brief in Docket 451 "describes the manner in which t weekly publication 'Labor' issues special editions urgi support for specific political candidates," citing page 69 that brief. The statement in Hanson's brief reads:

"The use of special editions of the newspap 'Labor,' published by the Railway Labor Executive Association, to help elect or defeat candidates f public office is explained in the appendix to the ca of *United States* v. *C. I. O.*, 335 U. S. 106 at 156, L. Ed. 1849 at 1879, 68 S. Ct. 1349 (1948). The writ of this brief remembers when such special editions 'Labor' were used to help elect Republicans to t United States Senate from Nebraska. But what a thority does the United States Congress have deprive Democrats of their right to work in the ra way industry unless they contribute their dues mon to help elect Republicans to public office?"

The Court will note there is no *evidence* what to in support of that statement on brief. Evi *son* was totally lacking on the issues here contrast, in the instant case we have the fo lations of fact (R. 189-190):

"49. Free space in 'Labor' has been, used to induce contributions to the fund Labor's Political League, and the Commit cal Education (COPE).

"Substantial portions of each issue a 'Labor' to legislative subjects and, du periods, to political subjects, dealing wit of candidates to public office.

"50. Also in the newspaper 'Labor', columns therein, the reporting is of a type and is designed to influence the re toward the particular political philosophy that publication, but to which plaintiffs plaintiffs, and the class they represent

• • • • •

"51. The legislative members of one m party are mentioned favorably in the co newspaper 'Labor' far more often than lative members of the other major politic the legislative members of one major p and its legislative and administrative po gram are generally extolled while the political party's legislative and administ and program are generally condemned cation.

"52. Without cost to a particular c newspaper 'Labor' publishes and distrib charge numerous copies of special editi to extoll the virtues of that particular c the great majority of such special editio prepared and used for the benefit of the one major political party.

"During the 1956 general election camp published and distributed 16 such special

turing that number of candidates.[1] The ag
number of copies of such special editions publis
distributed by 'Labor' during those campaig
727,000. Of those, a little less than one-half
'Labor's' regular subscribers in the States i
such candidates were running (in lieu of the
edition of that date)—a little over one-half w
tributed to members of the labor union def
who did not subscribe to 'Labor' as well as to m
of the general public. 'Labor' customarily h
pared and so distributed such special editions
tion years at least since 1940, and such special
are currently being prepared for 1958 general
campaigns."

In addition, the instant record contains actual c
the special editions published and distributed in t
general election campaigns.[2] They are:

Plaintiffs' Exhibit	Special Edition For
No. 149 (Tr. 550)	Wayne Morse
No. 150 (Tr. 551)	Frank Church
No. 151 (Tr. 552)	Alan Bible
No. 152 (Tr. 553)	Warren Magnuso
No. 154 (Tr. 555)	Thomas Henning
No. 155 (Tr. 556)	Carl Hayden
No. 156 (Tr. 557)	John Carroll
No. 157 (Tr. 558)	Mike Monroney
No. 158 (Tr. 559)	John Bennett
No. 159 (Tr. 560)	Richard Stengel
No. 161 (Tr. 562)	Thomas Dodd
No. 162 (Tr. 563)	Lee Metcalf and Leroy Anderso
No. 163 (Tr. 564)	Earle Clements

[1] Seventeen editions featuring eighteen candidates, as i
out when we received the documents provided for in par
of the Stipulation—see also paragraph 79j of the Stipul
Facts (R. 163, 202).

[2] We hope the Court will examine these exhibits in the
Transcript filed with the Court. They were not printed
of the tremendous cost that would have entailed.

Plaintiffs' Exhibit	Special Ed
No. 164 (Tr. 565)	Claude
No. 165 (Tr. 566)	Willian
No. 166 (Tr. 567)	Joseph
No. 167 (Tr. 568)	Robert

A box appearing on the first page of the
read, typically, as follows (Plaintiffs' Exh

"A WORD OF EXPLANA

"LABOR has many regular reade
this newspaper needs no introductio
would like to say a few words about
other good people of your state. It
there be no misunderstanding about t

"LABOR is owned by 15 Standar
Organizations with more than a m
the United States and Canada. LAB
profit, has never printed a paid adv
supported entirely by the subscripti

"This special edition is issued as
to Oregon's great liberal Senator
Neither he, nor any of his friends
of rail labor, has contributed a penn
of this edition. It comes to you as a
from American railroad men and w
the noble character and career of Se
we believe men like him are needed
more than ever.

"Railroaders have many reasons f
to Wayne Morse, but we recommen
voters on still broader grounds. H
true friend, not only of workers in o
collars, but also of farmers, small bu
teachers, government employes, the
general, of honesty and decency in
Constitutional liberty—of all that m
prosperous, strong and free.

"That's why LABOR publishes th
telling Oregon voters about our faith
Morse."

dition For
e Wickard
m Marland
h Clark
t Wagner

hese special editions
xhibit 149; Tr. 550):

ATION

ders in Oregon and
ion to them, but we
ut our paper to the
It is important that
t this special edition.
lard Railroad Labor
million members in
ABOR is not run for
advertisement and is
ptions of its readers.
as a heartfelt tribute
tor, Wayne Morse.
ds outside the ranks
enny toward the cost
s a free-will offering
d women. We know
f Senator Morse and
ded in Congress now

ns for being grateful
mend him to Oregon
s. He is a tried and
in overalls, and white
ll business men, school
, the plain people in
y in political life, of
at makes this country

es this special edition
faith in your Senator

It should be unnecessary to state that the position does not in any wise suggest the merits of particular parties or personalities. The attac based upon the simple principle that no one compelled by law to support *any* party or cand

The frankly partisan approach of these spec is best illustrated by Plaintiffs' Exhibit 167 (T special edition supporting Mayor Wagner in hi against Attorney General Javits for the Senate vacated by Senator Lehman. The issue in tha explained to New York voters in a front page follows:

> "The big issue in the current Senate c just this: Should Empire State voters sen ington an outstanding liberal—Robert Wag play on the same gressive [sic] Senate Herbert Lehman has helped to lead so long
>
> "Or should New York voters send to th Republican who'll be forced willy-nilly in role under the reactionary Old Guard team dominates the GOP?
>
> "That's the issue, and no one has explain clearly than Bob Wagner. 'Every Republi Wagner, 'when he talks to liberal audien election season, says he too is a liberal. But lican CAN be an effective liberal—they won'

Another article in that same edition stated:

> "The undoubted 'party line' assistance Republican senator from New York would ganizing the Senate under the GOP Old G second big reason why the rail unions ap New Yorkers to elect Bob Wagner instead."

We have singled out Exhibit 167 for specia because it demolishes the claim of appellants support the friends of labor regardless of par

[1] See, for example, Plaintiffs' Exhibit 369 (Tr. 858 appearing in the "American Federationist" published

That type of evidence was *not* in the *Hanson* record.

Appellants assert (brief, p. 37) that the *Hanson* record showed that "union dues were otherwise used for political purposes," citing the *Hanson* record, pp. 254-256, Ex. 31. That reference simply is to excerpts from the Congressional Record—House—January 4, 1951, a part of the legislative history of the Union Shop Amendment relating to matters occurring *before* the enactment of that amendment. Though such materials may aid in the interpretation of the Union Shop Amendment, they are not *evidence* of the political use of employees' funds. Similarly, the citations intended to support appellants' reference to legislative representatives and lobbying at page 37 of their brief are merely to (1) the Constitution of the Brotherhood Railway Carmen of America, (2) the Constitution of the Grand Lodge, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and (3) the Constitution of the Brotherhood of Maintenance of Way Employes, with no evidence of actual use of any money of any employee.

Appellants seem to think that mere argument of counsel is sufficient to cause this Court to decide constitutional questions, for they reproduce certain section headings and characterize certain argument appearing in Hanson's brief in Docket 451 (appellants' brief, pp. 37-38). While counsel for Hanson was making the most of a point which apparently occurred to him during the appellate stages of the case, the brief itself refers only to Constitutions and By-Laws of some of the appellants, legislative history of the Union Shop Amendment, the memory of counsel, and

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CIO, December 1956 edition, which states, in part: "Another new member of the Senate will be New York's Republican Attorney General Jacob K. Javits, who voted against the Taft-Hartley Act and cast many other votes favorable to working people when he was in the House." See also Tr. 719: "The trade union movement had endorsed the Democratic candidates, Senator Clements in Kentucky . . ., but it is believed that . . . Cooper . . . will be on the side of the people in future votes . . . Cooper had a fairly liberal record when he was a senator."

some newspaper articles *not* of record. It is perfectly obvious that this Court could not have been expected to pass upon a weighty constitutional question in *Hanson* without one shred of *evidence* that the right of any individual had been, or was about to be, infringed. *Shelley v. Kraemer,* 334 U. S. 1, 8-9 (1948); *Corrigan* v. *Buckley,* 271 U. S. 323, 329-330 (1926).

The *Hanson* record supplied no foundation of evidence for consideration of the application and effect of Section 2, Eleventh on the plaintiffs there. The union shop agreement had not taken effect. The plaintiffs had not yet joined the union, and consequently had paid no initiation fees, dues, or assessments. Perforce, the union had not applied any of the plaintiffs' money for political purposes, since none had been received. Whether political contributions might in the future be demanded of the plaintiffs remained wholly in the realm of conjecture and speculation. Hypothetical cases and predictions offer an inadequate base for constitutional adjudication. The salutary rule foreclosing decision in such a circumstance was explained in *United Public Workers* v. *Mitchell,* 330 U. S. 75, 89-90 (1947):

> "As is well known, the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues 'concrete legal issues, presented in actual cases, not abstractions' are requisite. This is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution. * * * Appellants want to engage in 'political management and political campaigns,' to persuade others to follow appellants' views by discussion, speeches, articles and other acts reasonably designed to secure the selection of appellants' political choices. Such generality of objection is really an attack on the political expediency of the Hatch Act, not the presentation of legal issues. It is beyond the com-

petence of courts to render such a decision. *Texas* v. *Interstate Commerce Commission*, 258 U. S. 158, 162.

"The power of courts, and ultimately of this court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other."

Thus, the Court in *Hanson* did not and could not decide whether the Constitution would be offended if political exactions should be required, because the record did not, and in the nature of things could not, present the question whether the Act in fact, as administered and applied to those plaintiffs in the past, was constitutional. See to the same effect *United States* v. *Raines*, 28 L. Week 4147, 4148 (U. S. Feb. 29, 1960; No. 64).

Yet the Court, from even the meager materials described above, recognized the great significance of the potential constitutional infringement and that is *exactly* the reason, we believe, that it passed only upon the questions *specifically* raised, with adequate evidentiary support in *Hanson*, and *reserved* decision on the problems relating to the infringement of personal liberties to a subsequent case having positive evidence of record on the point. We believe the record in the instant case is what this Court was waiting for, and we will point out in other sections of this brief how the appellant unions use moneys exacted under the union shop agreement "to impair freedom of expression" and "as a cover for forcing ideological conformity" and "other action in contravention of the First Amendment."

B. The Political and Ideological Activities of the Unions Are Not "Germane to Collective Bargaining".

Appellants devote pages 56-62 of their brief to an attempted showing that their political and legislative activities are "germane to collective bargaining." Appellants, in that portion of their brief, actually assume the conclusion they would like to have this Court reach on the merits.

The reason appellants attempt to strain the expression "germane to collective bargaining" to fit their far-reaching political and ideological activities is that they are, in this renewed guise, still attempting to convince this Court that the *Hanson* decision approved such activities. In *Hanson* this Court said that if the unions were to assess charges "for purposes not germane to collective bargaining" a "different problem" would be presented. Yet, as will be seen from the appellants' brief and from ensuing discussion, if all of the activities of appellants are in fact "germane to collective bargaining"—even though they relate to international politics and countless items for which, obviously, the union does not and could not bargain with the employer—then this Court's promise to consider the "different problem" when it arose becomes meaningless.

We believe that "germane to collective bargaining," as used by the Court, means directly relevant to and in aid of the bargaining between employees and employer as contemplated by the Railway Labor Act. In appellants' view, the Court's phrase means nothing.

Essentially, appellants are saying that, since the law vests in them authority to bargain with employers as to rates of pay, rules, and working conditions on behalf of all employees in the crafts or classes which they represent, they must also be vested with authority to decide for the same employees which candidates should be supported or opposed in elections and which legislative measures should be favored or resisted. Whether Congress can constitutionally authorize them not only to bargain as to rates of

pay, rules, and working conditions but also to compel willing members to support their political, propagan and legislative programs is the basic issue of this actio

Appellants' analysis expressly acknowledges that the terests of the working man in improvement of his lot be pursued in at least two ways—the processes of coll tive bargaining, on the one hand, and the political legislative processes, on the other. Indeed they have mitted (their brief, p. 53) that "the efforts of the railw labor organizations . . . have on some subjects been direc as much *if not more* to legislative and political meth of achieving their goals as to conventional 'collective b gaining' " (italics added). Appellants have sought to scure the fact that these two lines of action are v different and are separated by a wide gulf.

That gulf is bridged by appellants' assumption t their designations as statutory collective bargaining age constitutionally included also a designation to serve the political and legislative agents of all employees wh they represent. But there is no warrant for this assu tion, for, while this Court held in *Hanson* that employ can be compelled not only to accept a union's represen tion when selected by a majority of employees but a to support the activities of the union "in the realm collective bargaining," it has never held that employ can, consistently with the Bill of Rights, be forced to acc and give financial support to, a union as their statut political and legislative agent.

To say that political activity is "germane to collect bargaining" simply because it represents a *different met* of achieving the same ends in certain limited areas analogous to saying that inheriting and earning are "g mane" to each other because they are different means acquiring money. The fact is that one does not aid relate to the other. They are completely dissimilar meth of accomplishing an objective. Certainly this Court the *Hanson* decision did not mean that, because the uni have statutory designation to negotiate *with the emplo*

for *contractual* benefits, they also have a roving commission to seek similar or different benefits by any means and from any source they might choose.

The record in this case shows clearly that the political and ideological use of funds forcibly extracted from the individual appellees is not "germane" to collective bargaining.

The primary inquiry at this point is "What is collective bargaining?"

In the National Labor Relations Act, "collective bargaining" is defined as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached . . ." National Labor Relations Act, as amended, Section 8(d); 29 U. S. C. § 158(d). Although collective bargaining is not so defined as a term of art in the Railway Labor Act, it is clear that "collective bargaining" under that Act has the same content and significance. Thus, the general purposes of the Railway Labor Act are stated to be (45 U. S. C. § 151(a)):

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Items (4) and (5) express what might be termed the
tive bargaining aspects of the Railway Labor Act.

The fact that collective bargaining has to do w
relations between the employees and the employer
dent in Section 2, Third and Fourth of the Railway
Act providing for the independence of the employe
lective bargaining representatives.

In supporting the proposed 1934 Amendments
Railway Labor Act, Representative Crosser, their s
testified before the Committee on Rules of the H
Representatives (H. Doc. 5503, A4, 1934, p. 14):

> "These men [railroad employees] ought to
> free right to organize voluntarily, without interf
> any kind of organization they want. There should
> any fake organization created for them, by m
> the money and the pressure of the employer, i
> is going to be anything left in this matter of co
> bargaining, so-called.
>
> "I can understand how men who hold to
> fashioned doctrine of laissez faire object to this
> do not believe in collective bargaining at all, b
> do say, as they did when they appeared befo
> committee, it may be it is necessary, proper and
> able from the standpoint of future peace and pro
> that we do have collective bargaining to settle t
> and grievances, that we do have a properly or
> union; and surely no fair-minded man, no ma
> from hypocrisy, would undertake to claim that c
> has the right to name the representatives of th
> side to carry on negotiations."

Commissioner J. B. Eastman, testifying in support
same proposals, said (Hearings before the Commi
Interstate and Foreign Commerce, H. Doc. 5503, A
p. 22):

> "Now, coming to section 2, I want to begin by
> ing out that the two parties which engage in co
> bargaining shall be truly representative of the i

which they purport to represent and wholly independent of each other."

In *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 334-335 (1944), this Court stated:

> "Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit . . . The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment."

The Court stated that majority rule "collectivizes the employment bargain," subsequently referred to as "the collective bargain" (321 U. S. 339). That this amounts to what has been depicted above—*i.e.* negotiations and other handling of employee's problems and demands with management by a representative of the employees—is made clear by Section 2, Ninth of the Railway Labor Act (45 U. S. C. § 152, Ninth) which imposes upon the carrier the obligation to "treat" with the representatives of its employees certified by the National Mediation Board. In *Virginian Ry.* v. *System Federation No. 40*, 300 U. S. 515 (1937), the Court said (300 U. S. 553):

> "The Railway Labor Act, § 2 (45 U. S. C. A. § 151a), declares that its purposes, among others, are 'to avoid any interruption to commerce or to the operation of any carrier engaged therein,' and 'to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.' The provisions of the act and its history, to which reference has been made, establish that such are its purposes, and that the latter is in aid of the former. What has been said indicates clearly that its provisions are aimed at the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representative of their employees, and by mediation and arbitration when such bargaining does not result in agreement."

It is clear, at least, that the political and legislati
ties of the appellants are not themselves "collec
gaining". Let us now examine appellants' claim t
activities are "germane" to collective bargaining.

So far as their political activities are concerned t
lants have clearly stipulated (R. 191):

> "The political activities mentioned in this
> tion of Facts do not involve and are unnece
> the negotiation, maintenance and administr
> agreements concerning rates of pay, rules a
> ing conditions, or wages, hours, terms and oth
> tions of employment, or the handling of dis
> lating to the above."

These political activities are not of a minor natur
they can be ignored as *de minimis* or merely insi
incidents of collective bargaining activities. A
have stipulated (R. 188):

> "The money which has been, is being, and
> paid by plaintiffs, intervening plaintiffs and
> they represent as dues, fees, and assessments
> is being and will be used in substantial part to
> candidates for the offices of President, Vice P
> U. S. Senators and Congressmen and their ca
> as described elsewhere in this Stipulation of F
> for direct contributions to candidates for vari
> and local offices, as described elsewhere in th
> lation of Facts."

They also stipulate (R. 187-188):

> "The funds expended by the labor union de
> for political activities as set forth in this St
> of Facts are substantial, and the prop
> amounts of the periodic dues, fees, and ass
> which are being paid, or which will be requi
> paid, by the plaintiffs and intervening plain
> the class they represent are also substantial,
> amounts of such dues which are and will be u
> mately for political purposes are also substa

The record in this case contains many specimens of a
pellants' political activities, revealing that they are n
in aid of collective bargaining, but represent simply
massive engagement in national politics, an attempt to l
come a dominant factor in one political party.

The standard practice of appellants, and the vario
labor organizations with which they are affiliated, is
urge support of candidates on the basis of their pa
voting records on selected issues on which they are scor
as voting "right" or "wrong". See COPE's Score She
for the U. S. Congress for 1947-1956 (Tr. 415); MNL
Score Sheet for 1955-1957 (Tr. 377-378). In COPE's Sco
Sheet the issues upon which the Senators and Represent
tives are rated are described as follows:

> "It should be noted that the votes are arranged
> four groups: (1) Labor Legislation, (2) General W
> fare Legislation, (3) Domestic Policy, and (4) Forei
> Aid. Thus AFL-CIO members and the public at lar
> are assured that the AFL-CIO does not judge Co
> gressmen on selfish narrow lines but with the bro
> public interest in mind."

The same types of issues are used by the other lab
groups.

By what right does a labor organization use mon
collected under the approval of the federal governme
from an employee under a union shop agreement ostensib
for collective bargaining purposes, to promote candidat
because of their voting record on general welfare legis
tion, or on domestic policy issues, or on foreign aid?
what relevance is it to collective bargaining that a can
date is either for or against foreign aid, or that he believ
that states rather than the federal government should co
trol off-shore oil, or that he favors 90% parity for fa
price supports? Clearly, there is no relationship wh
ever.

Clearly also there are senators and representativ
"friendly" to labor in both political parties, yet the

pellants and the organizations affiliated wit
stantly give blanket support to one party as ag
(see pp. 12a-21a of Appendix to this brief;
35-36; R. 196, pars. 66-67; R. 300, R. 307, R.

Appellants argue that "effective political ac
expansion beyond mere bread and butter iss
to attain wider political support to help elect
officials" (brief, p. 61). The logical applica
principle requires a base of issues as broad
itself. Its result has been the regular and
support of one political party to the virtual
the others. That, we contend, is far beyond
collective bargaining. A labor party (in de
name) cannot be created through funds exac
union shop agreement.

The same principles apply to appellants' po
toral) activities and to their legislative activ
legislative activities have as their objectives t
or defeat of legislation having no relevance
bargaining. See Plaintiffs' Exhibit 7 (Tr. 393),
R. 179.

In line with their political and legislative a
"political education" engaged in by appellan
affiliated organizations has no relation to co
gaining. It consists of an attempt to indoctrin
and others with the appellants' particular ortho
ing support for such things as public powe
foreign aid, etc. Consequently, it is clear that
activities can properly be considered as "germ
lective bargaining, for which subject matter
lants are authorized by statute to represent t
appellees and the class represented by them a
financial contributions from them.

When one considers that, under the Railwa
a collective bargaining representative "may eit
son or persons, or a labor union or organizati
Years Under the Railway Labor Act, Amen
National Mediation Board, 1934-1949 (1950),

the National Mediation Board, p. 13), the claim tha
cal activity is "germane to collective bargaining"
transparently absurd. If John Jones is designate
representative of a large group of employees in
and uses their "dues" to advance himself to G
or to Chairman of a political party in that state,
sustain the position that such use is "germane"
agency for the employees since he thereby can i
elections and legislative proposals which he deem
interest of the employees?

No one would seriously contend that an individu
convert the "dues" paid him by his principals t
designed to advance his own political ambitions, ob
or beliefs. If politics is not "germane" to an indi
representation of employees in collective bargai
must be equally foreign to the statutory duties of
union, for the same Act governs both types of re
tative.

In *Hanson* this Court held that Congress is emp
by the Constitution to compel a railroad employe
cept an unwanted representative for collective bar
But Congress has no power to re-order the Nation
cal structure by compelling the employee to acce
an unwanted representative for the exercise of his
rights.

II.

**The union shop contract, by forcing minor
ployees to accept and pay for political repres
by their political foes, violates the First, Fifth
and Tenth Amendments to the Federal Constit**

We shall demonstrate hereinafter that consti
rights are violated by use of the union shop con
force minority employees to associate themselves w
support financially, the propagation of political view
they in fact oppose, and that "ideological confor
thereby imposed.

In order for the union shop contract a
of the appellant unions thereunder to const
of constitutional rights, such contract and a
found to represent governmental action.
shall first demonstrate that governmental ac

**A. The Union Shop Contract and the Activiti
Thereunder Represent Governmental Acti
Constitutional Rights of Minority Employe**

The unions argue (pp. 21-25 of their brief
simplicity that when Congress in 1951 repe
Railway Labor Act prohibition of the unic
sultant imposition of compulsory union mem
restored the common law right of the emplo
the employee for any or no reason and di
affirmative federal governmental action im
ployment rights of minority employees.

That argument represents a stubborn
unions to recognize the real issue in this
Can Congress first require *minority* empl
for *collective bargaining* an agent selected
test by the majority, and then later expan
of the agent—again over the protest of t
force the minority not only to pay union d
hold their jobs, but also to *associate thems
contribute their money* for the propagation
beliefs of the majority which differ fro
minority?

More narrowly defined, the question is wh
can require the minority of the employee
dictation of the majority with respect to *po
rates of pay, rules and working conditio
require the minority to pay the union to act a
all political subjects even though the union s
reverse of the views of the minority employe
jects.

Can Congress thus require the minority e
cept and *pay for* political representation wh

want and which grossly misrepresents their views
stated, that is the issue in this case.

So stated, the question seems rhetorical and the
obvious. Surely Congress could not thus auth
political domination of any minority, requiring the
to contribute the funds to finance its own sul
Surely Congress itself could not *tax* the minority
in order to propagate and magnify the expression
with which they disagree. How, then, could Con
thorize a union to do the same thing? Yet it is per
vious that, without the authority of Congress, t
could not thus tax the minority employees for poli
poses, and that therefore if the unions have the
extract funds from the minority for such purp
right derives from Congress through the 1951 a
of the Railway Labor Act.

The contention of the unions that federal gov
action is not involved is contrary to the conclusi
Court in the *Hanson* case, when the Court was
forced contribution for *collective bargaining only*
reference to the *a fortiori* situation where, as
tributions for political and ideological purposes a
pursuant to the union shop contract. The Co
said (351 U. S. at 231-232):

> "The union shop provision of the Railway
> is only permissive. Congress has not comp
> required carriers and employees to enter i
> shop agreements. The Supreme Court of
> nevertheless took the view that justiciable
> under the First and Fifth Amendments were
> since Congress, by the union shop provision o
> way Labor Act, sought to strike down inconsi
> in 17 States. Cf. Hudson v. Atlantic Coast Li
> 242 N. C. 650, 89 S. E. 2d 441; Otten v. Balti
> R. Co., 2 Cir., 205 F. 2d 58. The Supreme
> Nebraska said, 'Such action on the part of
> is a necessary part of every union shop co
> tered into on the railroads as far as these
> are concerned for without it such contracts

be enforced therein.' 160 Neb. at 698, 71 N. W. 2d at 547. We agree with that view. If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded. Cf. Smith v. Allwright, 321 U. S. 649, 663. In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed. Cf. Steele v. Louisville & N. R. Co., 323 U. S. 192, 198-199, 204; Public Utilities Commission of District of Columbia v. Pollak, 343 U. S. 451, 462. The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction.

"As already noted, the 1951 amendment, permitting the negotiation of union shop agreements, expressly allows those agreements notwithstanding any law 'of any State.' § 2, Eleventh. A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provision of the laws of a State."

The author of this opinion elaborated its meaning two weeks later in *Black* v. *Cutter Laboratories,* 351 U. S. 292, 302 and footnote (1956). There Mr. Justice Douglas states that an employer independently could discriminate against Republicans and hire only Democrats if he chose, but that "A union has no such liberty if it operates with the sanction of the State or Federal Government behind it. It is then the agency by which governmental policy is expressed and may not make discriminations that the Government may not make", citing the *Hanson* case, among others.

The meaning of the Court's decision in the *Hanson* case is further emphasized by the decision in *Teamsters Union* v. *Oliver,* 358 U. S. 283, 296-297 (1959), where the Court, through Mr. Justice Brennan, stated:

"Of course, the paramount force of the federal law remains even though it is expressed in the details of a

contract federal law empowers the parties to make, rather than in terms in an enactment of Congress. See *Railway Employees' Dept.* v. *Hanson*, 351 U. S. 225, 232."

The unions suggest that the Court's conclusion should be different where, as in Georgia, the "right to work" statute does not apply to railroads subject to the Railway Labor Act. However, that argument overlooks the facts: (1) that the Court's reasoning in the *Hanson* case does not depend on the accident of actual supersession of state law by the Railway Labor Act in order to find federal governmental action in the union shop requirements; (2) that the Georgia courts have ruled quite explicitly in this case that the union shop requirements here involved are invalid under Georgia law unless the Railway Labor Act constitutionally takes priority over Georgia law; and (3) that this case involves employees in states other than Georgia where right to work statutes apply to the entire railroad industry, and therefore supersession of state law is necessary in order to make a union shop contract effective systemwide.

From the language of this Court's decision in the *Hanson* case, as quoted above, together with the authorities cited by the Court, it seems clear that the Court had the following factors in mind when it concluded that the union shop represented governmental action:

1. ***The Union Shop Contract Depends on the Supremacy of Federal Legislation for Its Existence.***

The validity of the union shop contract here in issue must stand or fall under federal law. It would be senseless to suppose that Congressional power could be made to depend upon state consent, so that Section 2, Eleventh would be unconstitutional in states having right-to-work laws to be superseded, but constitutional in states where state law would tolerate such political exaction under a union-shop arrangement. An act of Congress is not the less federal action because state law happens at the moment to coincide.

It is still federal authority that dominates (*Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448 (1957)), and the Bill of Rights may not be evaded by such sophistry. It may be noted that the Taft-Hartley law leaves the question of the union shop to state decision. § 14 (m), 61 Stat. 151, 29 U. S. C. § 164 (b).

Moreover, the union shop requirements here involved are unlawful in Georgia and in other states which have applicable right to work statutes, unless the Federal Union Shop Amendment supersedes the laws of such states.

The trial court below held (R. 104):

> "Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State..."

To that finding appellants excepted (R. 234) and the Supreme Court sustained the trial court (215 Ga. 42-47; R. 265-270). That decision was one involving an interpretation of Georgia law, and well within the competence of the Supreme Court of Georgia. This Court invariably defers to the highest state tribunal in questions of interpretation of state law. *Oklahoma Tax Comm'n* v. *Texas Co.*, 336 U. S. 342 (1949); *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673 (1930); *Williams* v. *Kaiser*, 323 U. S. 471 (1945); *Madden* v. *Kentucky*, 309 U. S. 83 (1940).

The trial court found also that "Said exaction and use of money and said union shop agreements and their enforcement are contrary ... to the statutes or laws of other states in which the defendant railroads operate" (R. 104). Among the other states in which the Southern Railway System operates, and which have right-to-work laws with no exceptions for the railroad industry, is North Carolina (R. 198; see Appendix to this brief, p. 57a, n. 1). In *Allen* v. *Southern Railway*, 249 N. C. 491, 107 S. E. 2d 125 (1959), petition for rehearing granted, now pending on reconsideration, the North Carolina Supreme Court specifically held:

"Absent the Union Shop Amendment the union shop agreement would be void under the North Carolina Right to Work Act. Session Laws of 1947, Ch. 328, G. S. § 95-78 *et seq.*"

The action of the Union Shop Amendment in accomplishing nullification of that and other state statutes was federal governmental action.

2. *Apart from the Union Shop Amendment, the Appellants' Powers Derive from Government and Are Subject to Constitutional Limitations.*

If Congress had not specifically authorized the union shop agreement, the power exerted by the unions upon the members of the class represented would still be confined by the guarantees of the federal Constitution. Under the Railway Labor Act, the union is born, lives, and acts under federal authority; this authority cannot transcend the constitutional boundaries.

(a) The power to bind minority members of the class is conferred by federal law.

The only authority of the unions to represent the individual appellees comes from the Railway Labor Act. As the Court said in *Steele* v. *Louisville & N. R. R.*, 323 U. S. 192, 199 (1944):

"Since petitioner and the other Negro members of the craft are not members of the Brotherhood or eligible for membership, the authority to act for them is derived not from their action or consent but wholly from the command of the Act."

Even more pertinent is the following language (323 U. S. at 200):

"Section 2, Second, requiring carriers to bargain with the representative so chosen, operates to exclude any other from representing a craft. Virginian R. Co. v. System Federation, supra, 300 U. S. 545, 57 S. Ct. 598, 81 L. Ed. 789. The minority members of a craft are

thus deprived by the statute of the right, which t
would otherwise possess, to choose a representative
their own, and its members cannot bargain individu
on behalf of themselves as to matters which are pr
erly the subject of collective bargaining. Order
Railroad Telegraphers v. Railway Express Agen
321 U. S. 342, 64 S. Ct. 582, and see under the l
provisions of the National Labor Relations Act J.
Case Co. v. National Labor Relations Board, 321 U.
332, 64 S. Ct. 576, and Medo Photo Supply Co
v. National Labor Relations Board, 321 U. S. 678,
S. Ct. 830."

Thus the Act has taken away from the individual appell
the right which they previously had to represent themselv
and has given to the union designated by the majority e
ployees complete power to negotiate rates of pay, rules a
working conditions for the minority. This power is liker
by the Court (323 U. S. at 202) to powers "possessed by
legislative body both to create and restrict the rights
those whom it represents." As the Court further said (3
U. S. at 204), a "right asserted, which is derived from
duty imposed by the statute on the bargaining represen
tive, is a federal right implied from the statute and
policy which it has adopted."

In the concurring opinion of Mr. Justice Murphy,
legal situation is thus described (323 U. S. at 208):

"The constitutional problem inherent in this insta
is clear. Congress, through the Railway Labor A
has conferred upon the union selected by a major
of a craft or class of railway workers the power
represent the entire craft or class in all collect
bargaining matters. While such a union is essentia
a private organization, its power to represent and b
all members of a class or craft is derived sol
from Congress."

The essence of governmental power, indeed the definit
of government, is the capacity to bind a dissenting min

ity. In the exercise of that power, the labor representative must observe the Constitution.

The necessary principle that every contract made by the railway labor representative through the power of the federal government must be measured against the Constitution has been repeatedly declared and applied by this Court. See, *e.g.*, *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, 773-774 (1952); *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U. S. 210 (1944). Whenever the "authority derives in part from Government's thumb on the scales," *American Communications Association* v. *Douds*, 339 U. S. 382, 401 (1951), the commands of the Constitution are called into play.

(b) The organization and designation of the labor representative result from federal action.

The labor representative under the Act is a creature of that law. In its origin, the labor organization is fostered by governmental establishment of a legally enforcible right of employees to join together for collective bargaining purposes. Section 2, Fourth. The carrier is forbidden by law to interfere in this process of organization. Section 2, Third, Fourth, Fifth and Tenth.

Once organized, the union is again the recipient of federal sanction in the form of election and certification as the exclusive bargaining agent. The election procedure is protected and regulated in detail. Section 2, Third and Fourth. Section 2, Eighth further reinforces the protections surrounding the election procedure, and Section 2, Tenth provides criminal penalties enforcing the provisions for unimpeded selection of the collective bargaining agent.

Section 2, Ninth turns over to the National Mediation Board complete control of the elective procedure, giving that federal agency power to "investigate" and "certify", to "take a secret ballot" or "to utilize any other appropriate method" of electing the bargaining agent, and to "designate who may participate in the election and estab-

lish the rules to govern the election." Certainly n complete control of elective procedure is held by an ernmental body, federal or state. Indeed, this Cou held that the Mediation Board's control of electi even beyond the reach of judicial review (*Switc Union* v. *National Mediation Board*, 320 U. S. 297 (—a degree of absolutism which is unequaled in any electoral process.

Where government has assumed far less contro election procedure, this Court has held that the g ment "endorses, adopts and enforces" unconstitution sequences of the process. Thus, in *Smith* v. *All* 321 U. S. 649, 663 (1944), the Court said in disc a primary election conducted by an ostensibly "p political party: "The party takes its character as a agency from the duties imposed upon it by state st the duties do not become matters of private law b they are performed by a political party." The Cou concluded (321 U. S. at 664):

> "If the state requires a certain electoral procedur scribes a general election ballot made up of nominees so chosen and limits the choice of th torate in general elections for state offices, prac speaking, to those whose names appear on such a it endorses, adopts and enforces the discrimi against Negroes, practiced by a party entrus Texas law with the determination of the qualifi of participants in the primary. This is state within the meaning of the Fifteenth Amendme

Certainly, the much more complete and absolute which Congress has asserted over the selection of lective bargaining agent under the Railway Labo constitutes federal action within the meaning of the and Fifth Amendments to the Constitution, and the government thereby "endorses, adopts and enforce discriminatory or other unconstitutional actions wh sult from the electoral procedure. It would appea

the Court's decision in *Terry* v. *Adams*, 345 U. S. 461 (1953), that even if the federal controls over the election of the "legislative body"—the collective bargaining agent—were removed, discriminatory conduct by the agent would still constitute governmental action since the right and duty of the agent to represent the employees is conferred by federal statute and the government must correlatively protect the employees against either improper activities in selection of the agent (*Smith* v. *Allwright* and *Terry* v. *Adams*) or unconstitutional deprivation of rights resulting from negotiations by the agent (*Steele* v. *Louisville & N. R.R.*). See to this general effect *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1956), where it was held that a private cafeteria operator's action in discriminating on grounds of race in premises leased from the county constituted "governmental action". *Cf. Muir* v. *Louisville Park Theatricel Ass'n*, 347 U. S. 971 (1954), *reversing per curiam*, 202 F. 2d 275 (6th Cir. 1954).

(c) The labor representative is created to perform a governmental function and serve as the instrument of federal policy.

It may be suggested by the unions that the principle of *Smith* v. *Allwright* and *Terry* v. *Adams* applies only to situations where the ostensibly "private" organization (political party or collective bargaining agent) is an instrument for achieving some governmental policy or objective, such as the election of public officials. The rule of those cases would seem to be applicable to this case regardless of the presence or absence of a governmental objective, since the government has interjected itself to change and control the bargaining relationships between employer and employee and has assumed the regulation of such relationships and the bargaining itself in great detail, not only through statutory and administrative rules and actions, but also through implied statutory requirements announced through the federal courts (see, for example, *Steele* v. *Louisville & N. R.R., supra*).

But if the effectuation of a governmental policy i
essential for discovery of governmental action i
forcement of union shop requirements, it shoul
ficient to note that in the *Hanson* case this Court
Congress chose "the union shop as a stabilizin
and that "Congress might well believe that it w
insure the right to work in and along the arteries
state commerce". Thus it is clear that Congress has
the union shop amendment to the Railway Labo
a means of regulating interstate commerce. Sur
the federal government cannot disclaim responsi
the consequences of the union shop where partie
lective bargaining have entered into the very typ
tract which Congress felt would be a "stabilizin
and particularly where, as will be more fully sh
parties were greatly influenced by federal gove
agencies in negotiating such a contract.

The appellants' current position (their brief, p
that § 2, Eleventh merely repealed the former pr
of the union shop cannot be squared with their
before the governmental agency that entered into
tiation of this agreement. At the hearing before E
Board No. 98 regarding the union shop demand
non-operating railroad unions, on November 11,
appellants' counsel, Mr. Schoene, said in his openi
ment:

> "... Further, as evidence we will produce and
> you, when Congress was giving consideratio
> matter it was fully aware that the inevitable
> the enactment of this legislation would be the
> of union shop and check-off agreements gener
> the carriers throughout the country. The am
> legislation was sponsored by the railway labo
> izations. They made it perfectly clear in their
> ship of that legislation that they were not sim
> ing some abstract revision of the law, but it
> intent and purpose when the law was amend
> mediately seek and procure union shop ag
> with the carriers throughout the country. The
> likewise were fully aware of that consequenc

"We will show you in the evidence that the carriers stated—a spokesman for the carriers repeatedly stated to the Congress that if Congress were going to enact such a bill they might as well make it mandatory because the result of enacting the bill would inevitably be the execution of union shop and check-off agreements.

"Now, of course, Congress could not make it mandatory. It is a contradiction in terms to speak of union shops or check-off agreements as being mandatory. But Congress, after having heard the carriers say, and not having heard the organizations deny, that the inevitable consequence of adopting the bill would be the execution of the union shop and check-off agreements throughout the country, proceeded to enact the bill, clearly contemplating exactly the result that had been forecast by the carriers when opposing the bill.

"Now, with that clear expression of national policy on the part of the highest policy-making body in this country, we do not feel that this Board should presume to review as a matter of principle the policy determination made by the Congress of the United States. . . ."

(d) In negotiating and bargaining, the union exerts governmental power.

The Railway Labor Act does not stop with the imposition of an unwanted agency upon the employee as a matter of law. It goes further to make that agency exclusive. The employee is forbidden to bargain for himself. Moreover, the carrier is prohibited from dealing with any other person or representative, and even from taking unilateral action in the domain staked out for bargaining. Section 2 Seventh and Eighth; Section 6. Further, the law visits upon the employer not merely a negative duty not to negotiate with others; it enjoins an affirmative duty "to exert every reasonable effort to make and maintain agreements . . . and to settle all disputes . . ." (Section 2, First see *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 304 (1943)). And the law subjects the carrier

to a specific obligation to confer with the lab
tative. Section 2, Second and Sixth. As a p
in interstate commerce, the common carrier
subject to extensive regulation, and the Rai
Act offers the additional sanction of criminal
for breach of certain of these duties running
organization. Section 2, Tenth. In the process
tion, therefore, the federally-approved and auth
representative is not simply a private associa
to all the economic forces and bargaining tec
operate in the field of private contracts. By a
federal government, it is elevated to a preferre
status. When governmental power enters into
ment contract, an employee may be discharged
vate employer only in accordance with the c
guarantees erected against government. *Greene*
360 U. S. 474 (1959).

**(e) Governmental power was directly exerted in
negotiation of the union shop contract.**

Here, the federal government has done fa
regulate the selection of the "legislative body"
tive bargaining agent. It has regulated and d
substantial degree the "legislation itself"—*i.e*
tiation of the union shop contract. Section 2, Se
Act prohibits any contract change "except in
prescribed in such agreements or in section 6
Section 6 specifies the procedure by which
changes are to be negotiated. Section 5 provid
governmental intervention in the negotiations,
diation Board is required to "put itself in co
with the parties" to a dispute over contract
"and shall use its best efforts, by mediation, to
to agreement." The Mediation Board did i
ticipate, by mediation, in the negotiations leadi
union shop contract (R. 43).

When agreement was not reached in the medi
and arbitration was rejected by the parties,

ment of an Emergency Board was recommended b
Mediation Board, and the President of the United
appointed such a Board pursuant to the procedure sp
by Congress in Section 10 of the Act. After hearing
Emergency Board recommended that the parties ente
a union shop contract (R. 43-44), and it was on the
of that recommendation that the union shop contra
signed.

There can be no doubt that the Emergency Board w
agency of the federal government, being appointed
President, upon the recommendation of the Med
Board, and pursuant to procedure established by Con
It is further clear that the recommendation of the
gency Board was, and was intended by Congress, the
dent and the Mediation Board to be, highly influen
determining the course of the negotiations and in br
about an agreement. The legislative history of the R
Labor Act shows the purpose of Congress to have
gency Boards consist of "outstanding representati
the public" who would be able "to give the public ad
and intelligent information regarding the merits
contentions of the parties to crystallize public opin
support of that party or that program which sho
supported in the public interest." H. Rep. 328, 69
1st Sess., p. 5 (1926). It was further stated that th
pose of an Emergency Board was "to express a
mobilize public opinion to an extent impossible b
permanent board or agency of government which has
tofore been created for that purpose." *Id.* at p. 5

The prestige and impartiality of Emergency Board
intended to be such that it would be difficult for the
not to accept such recommendations. See Testimo
Donald R. Richberg, Hearings on S. 2306, U. S. S
Committee on Interstate Commerce, 69th Cong., 1st
pp. 18-19 (1926).

As Congressman Crosser explained it (67 Cong
4665, 69th Cong., 1st Sess. (1926)):

> "The bill provides for boards of adjust
> of conciliation, an emergency board, a
> arbitration by which disputes are to be s
> boards serve in a manner as courts to d
> is right and who is wrong, what is ju
> unjust, in disputes between railroads a
> ployees."

And in discussing the functions of the Eme
Congressman Barkley said (67 Cong. Rec. 451
1st Sess. (1926)):

> "If they can not bring the parties tog
> is made their duty to make a report up
> of the controversy, and by means of th
> power of public opinion is brought to bea
> upon the side which is recreant or blam
> might be a public calamity."

In its 22nd Annual Report for the fisca
June 30, 1956 (p. 27), the National Mediatio

> "The noncompulsion features of the ac
> applicable to reports of Presidential emer
> However, in keeping with the spirit and
> law it was contemplated that a report of
> would command the support of public op
> *accepted by the disputants as a basis o*
> *differences would be resolved*" (italics ad

Thus it is apparent that the federal gov
directly involved at all stages of the proceed
government was the primary influence leading
of the contract.

In *Public Utilities Commission* v. *Pollak*,
(1952), it was enough to invoke the constitut
tees that the Public Utilities Commission of
of Columbia had ordered an investigation of
sit's "Music As You Ride" program, held
dismissed the proceeding. Here the direct ap
Emergency Board, although not directly bind

federal ingredients to at least that degree. See also *B*
v. *Board of Education*, 349 U. S. 294, 298 (1955) v
local laws "permitting" discrimination were condem

(f) The union shop contract depends upon federal agencies for its enforcement.

Not only does the existence of the union shop con
depend on governmental action, but it could not be enf
without administrative and judicial agencies of the fe
government.

Under the Railway Labor Act all disputes over "i
pretation or application of agreements concerning rat
pay, rules, or working conditions . . . may be referre
petition of the parties or by either party to the approp
division of the Adjustment Board . . ." (Section 3,
(i)). This Court has held that the quoted statutory
guage creates "compulsory arbitration in this limited
inasmuch as "Congress has set up a tribunal to h
minor disputes which have not been resolved by the pa
themselves. Awards of this Board are 'final and bi
upon both parties.' And either side may submit the
pute to the Board." *Brotherhood of Railroad Trainm*
Chicago River & Indiana R.R., 353 U. S. 30, 34, 39 (1

Any disputes concerning interpretation or applicati
the union shop contract would therefore be referab
the National Railroad Adjustment Board—the agency
ated by Congress to settle such disputes—and the dec
of the Adjustment Board would be final and bindin
the parties. No state or federal tribunal would have j
diction to interpret or enforce the contract prior to a r
by the Adjustment Board. *Slocum* v. *Delaware L. &*
R.R., 339 U. S. 239 (1950); *Order of Railway Conducto*
Southern Ry., 339 U. S. 255 (1950).

If the decision of the Adjustment Board is not com
with, Congress has specifically conferred jurisdictio
federal district courts to enforce such decision (Secti
First (p) of the Railway Labor Act).

Exclusive primary jurisdiction of disputes over interpretation of the union shop contract thus is vested in the Adjustment Board, and jurisdiction (possibly exclusive) to enforce the Adjustment Board decision is vested in the federal courts—both tribunals being creatures of the federal government.

It is true that the union shop contract provides (R. 210) for arbitration of one type of dispute—a dispute over discharge of an employee—but even in that single instance the National Mediation Board is called upon to appoint an arbitrator if the parties are unable to agree on one.

Where tribunals created by government are called upon to enforce actions of "private" persons or organizations, this Court has repeatedly held that the enforcement constitutes governmental action affecting constitutional rights. Thus, in *Shelley* v. *Kraemer*, 334 U. S. 1 (1948), the Court held that a state, by allowing its courts to enforce a restrictive covenant, was discriminating against prospective purchasers or users of property on the basis of race. And in *Barrows* v. *Jackson*, 346 U. S. 249 (1953), the Court extended the doctrine of *Shelley* v. *Kraemer* by holding that the use of a state court to award damages for breach of such a restrictive covenant constituted governmental action by the state to enforce restrictive covenants. In *Marsh* v. *Alabama*, 326 U. S. 501 (1946), the Court held that invoking a state criminal statute to enforce a demand made by a private corporation constituted governmental action supporting such demand.

This Court fully recognized the applicability of the principle of *Shelley* v. *Kraemer*, *Barrows* v. *Jackson* and *Marsh* v. *Alabama* in the *Hanson* case, where it stated (Footnote 4):

> "Once courts enforce the agreement the sanction of government is, of course, put behind them. See Shelley v. Kraemer, 334 U. S. 1; Hurd v. Hodge, 334 U. S. 24; Barrows v. Jackson, 346 U. S. 249."

Here the federal government has assumed exclusive and extraordinary jurisdiction of the enforcement of the union shop contract. This suffices to subject the contract to constitutional scrutiny.

From the foregoing, it is clear beyond doubt that the union shop contract—created under federal governmental auspices and enforceable only by federal governmental agencies—represents governmental action and that any impairment of constitutional rights arising out of such contract is a violation by the federal government of the Bill of Rights.

B. The Political Freedom of Individual Appellees and Their Freedoms of Speech, Press and Association Are Being Violated by Compulsory Attachment of Unconstitutional Conditions.

Several important rights or interests of the individual appellees are threatened in this case. The first is their political liberty, secured by the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

1. The Union Shop Contract Deprives the Individual Appellees of Their Political Freedom.

Political liberty was not left to chance by the framers of our Constitution, who were well aware of the meaning of and necessity for such liberty. They embodied its protection in the First, Fifth, Ninth and Tenth Amendments where it is intertwined with, and actually a part of, the fundamental liberties protected by due process of law and the freedoms of speech, press and association.

This Court has explicitly recognized that constitutional protection is accorded political liberty in the Bill of Rights. In *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94-95 (1947), the Court ruled:

> "We accept appellant's contention that the nature of political rights reserved to the people by the Ninth and

> Tenth Amendments are involved. The right claim as inviolate may be stated as the right of a citizen act as a party official or worker to further his o political views. Thus we have a measure of interfere by the Hatch Act and the Rules with what otherw would be the freedom of the civil servant under t First, Ninth and Tenth Amendments. And, if we lo upon due process as a guarantee of freedom in tho fields, there is a corresponding impairment of th right under the Fifth Amendment."

In *American Communications Ass'n* v. *Douds*, 339 U. 382, 393 (1950), this Court carefully considered the co stitutionality of the non-Communist affidavit provision the National Labor Relations Act in "discouraging t exercise of political rights protected by the First Amer ment," thus recognizing that even "discouragement" political liberty must be tested under the Bill of Righ

The high position occupied by political liberty is ma fested by the fact that this Court has put it on the sai plane as freedom of speech, freedom of religion, and fr dom of the press. Speaking of the protections accord witnesses before Congressional investigating committe by the Bill of Rights, the Court said in *Watkins* v. *Unit States*, 354 U. S. 178, 188 (1957):

> "Nor can the First Amendment freedoms of spee press, religion, *or political belief and association* abridged" (italics added).

On the same day as the *Watkins* decision, the Ch Justice, Mr. Justice Black, Mr. Justice Douglas and M Justice Brennan, in *Sweezy* v. *New Hampshire*, 354 U. 234, 245 (1957), stressed the fact that "freedom of spee or press, freedom of political association, and freedom communication of ideas" are "highly sensitive areas", a said. (354 U. S. at 250):

> "Equally manifest as a fundamental principle of democratic society is political freedom of the in

vidual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

In the same case, Mr. Justice Frankfurter, joined by Mr. Justice Harlan, said (354 U.S. at 265):

"For a citizen to be made to forego even a part of so basic a liberty as his political autonomy, the subordinating interest of the State must be compelling . . . [T]he inviolability of privacy belonging to a citizen's political loyalties has so overwhelming an importance to the well-being of our kind of society that it cannot be constitutionally encroached upon on the basis of [a] meagre . . . countervailing interest of the State . . ."

The Court's further concern for "individual freedom" in association and political activity was expressed as follows in *National Association for Advancement of Colored People* v. *State of Alabama*, 357 U. S. 449, 460 (1958):

"Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. De Jonge v. Oregon, 299 U. S. 353, 364, 57 S. Ct. 255, 259, 81 L. Ed. 278; Thomas v. Collins, 323 U. S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters,

> and state action which may have the effect of curtail the freedom to associate is subject to the clos scrutiny."

In giving the "closest scrutiny" to possible inhibiti of freedom of association, the Court has rejected the ar ment, renewed here by the unions, that the freedom n be curtailed by "private" action. Thus, the Court w on to say (357 U. S. at 463):

> "It is not sufficient to answer, as the State does h that whatever repressive effect compulsory disclos of names of petitioner's members may have upon p ticipation by Alabama citizens in petitioner's activi follows not from *state* action but from *private* c munity pressures. The crucial factor is the interp of governmental and private action, for it is only a the initial exertion of state power represented by production order that private action takes hold."

Here, also, the curtailment of freedom of association freedom not to associate results from an "interplay governmental and private action", and the governmer action is, as demonstrated above, decisive, for withou the minority employees could not and would not be for into association with the ideas and activities of the uni in the political field. See to the same effect the rec decision of this Court in *Bates* v. *City of Little Rock* L. Week 4102 (U. S. Feb. 23, 1960, No. 41).

Appellants rely heavily (brief, 43-44) on *DeMille American Federation of Radio Artists*, 175 P. 2d *aff'd.*, 31 Cal. 2d 139, 187 P. 2d 769 (1947), *cert. den* 333 U. S. 876 (1948). That decision is inapposite. contention was made there that *government* required Mille to surrender his political rights to retain his Here, government is the decisive factor in depriving individual appellees of their political freedom.

In view of the Stipulation of Fact that appella political activities are not necessary to their collec

bargaining activities (R. 191), it is an indisputable violation of appellees' First Amendment rights (and beyond the furthest reaches of Congress' Commerce power) for appellees to be required to submit to political and legislative representation by appellants.

Of course, appellees retain the right to politicize on their own. But their participation through their union representatives negatives and destroys the effectiveness of their individual participation. It is worse than being merely "paired" off against themselves. Their self-appointed "spokesman"—the union—speaks so loudly that their individual voices cannot be heard. In this clearest possible violation of their freedom of association, the individuals are so thoroughly submerged by the mass which they are compelled to finance that their individual identities and views cannot be recognized.

The question therefore resolves itself into whether the "collective" political representation which the appellants impose upon appellees under the union shop agreement is constitutional. Clearly it is not. It is a flagrant infringement of appellees' freedom of association—as well as of their political rights.

In *Pappas* v. *Stacey*, 151 Me. 36, 116 A. 2d 497, 500, appeal dismissed, *Stacey* v. *Pappas*, 350 U. S. 870 (1955), the Supreme Judicial Court of Maine said:

> "Freedom to associate of necessity means as well freedom not to associate."

See also:

> *Thomas* v. *Collins*, 323 U. S. 516 (1945);
> *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34 (1937).

The individual appellees have urged that the requirement that they contribute money to be used by others to promote political programs and candidates which they oppose dilutes their right to the free exercise of their elective franchise. Obviously, their financial ability to

support political programs and candidates wl
favor is impaired to the extent they are forced t
programs and candidates opposed by them. And
as clear that this is a right which is protecte
Constitution.

United Public Workers v. *Mitchell, supr*
The Citizens' Savings & Loan Assoc. of C
Ohio v. *Topeka City,* 20 Wall. 655 (187

The amount of the exaction is not relevant. As
said in his "Memorial and Remonstrance Against
Assessments", ". . . the same authority which
a citizen to contribute 3 pence only of his pro
the support of any one establishment, may forc
conform to any other establishment in all case
ever." I Stokes, *Church and State in the Unit*
(Harper, 1950) p. 391.

Political liberty was the genesis of the Americ
lution. Nothing could be more fundamental. W
other rights guaranteed by our Constitution ar
by a most tenuous thread.

In the proposed brief submitted here as "Amicu
by the AFL-CIO it is argued (pp. 8-9):

> "What precise use a union subsequently
> its funds is not determined by the terms of
> shop contract whereby employee payments
> lected. That is a matter for determinatio
> majority of the union membership or by du
> officials acting under the union's governing ru
> a determination is thus wholly a matter of
> private action, with no state action involved
>
> "The right or power of a union to make
> expenditures is neither derived from nor reg
> statute or other governmental authority. *
> appellant unions here do not rely on federa
> thorizing union political activities or exp
> because there is no such law. They rely on
> *right of a private organization* to run its ov

in the best interests of its membership, absent any properly applicable governmental controls" (italics added).

This proposition, so boldly stated, is shocking.

The unions are telling the Court in this case that "It is right and proper for the federal government to help us collect money from unwilling employees, but after the money is in our hands, it's nobody's business what we do with it because we are a private organization."

As noted in part II D of this brief, it is a denial of due process for the government to appropriate private property for private purposes.

At this point it is significant that the extraction of money from the minority employees, coupled with the assertion by the unions of a right to spend the money as "private organizations," may have the effect of coercing the minority to associate themselves fully in the union affairs despite their personal desire not to do so. In *Public Utilities Commission of the District of Columbia et al.* v. *Pollak*, 343 U. S. 451, 468 (1952), Mr. Justice Douglas, dissenting, said:

> "If we remembered this lesson taught by the First Amendment, I do not believe we would construe 'liberty' within the meaning of the Fifth Amendment as narrowly as the Court does. The present case involves a form of coercion to make people listen. The listeners are of course in a public place; they are on street cars traveling to and from home. In one sense it can be said that those who ride the street cars do so voluntarily. Yet in a practical sense they are forced to ride, since this mode of transportation is today essential for many thousands. Compulsion which comes from circumstances can be as real as compulsion which comes from a command."

Here, as is indicated by the AFL-CIO brief, if employees are not willing to have their money used for any political purposes the union wishes, they must participate, likewise

unwillingly, in the internal affairs of this "privi
zation". Such participation is more than the
forma membership contemplated in *Hanson*.
it is an *actual* membership *coerced* by circums
involving a denial of the freedom of associati
necessarily includes freedom not to associate.

This Court has forcefully condemned even
subtle restrictions of freedom of association.
Wieman v. *Updegraff*, 344 U. S. 183, 191 (
Court declared unconstitutional an Oklahoma st
ing with disqualification for public employment o
of "disloyalty" because ". . . under the Oklal
the fact of association alone determines dislo
disqualification; it matters not whether associati
innocently or knowingly. To thus inhibit indivi
dom of movement is to stifle the flow of demo
pression and controversy at one of its chief sou
also the *Alabama* and *Little Rock* cases, *supra*.

The individual's relation to politics—the part
in shaping the destiny of our government—is
significance. As this Court observed in *United
United Auto Workers*, 352 U. S. 567, 570 (1957),
application of the Federal Corrupt Practices Ac
union expenditures:

> "Appreciation of the circumstances that
> statute is necessary for its understanding, a
> standing of it is necessary for adjudication o
> problems before us. Speaking broadly, w
> volved here is *the integrity of our electora
> and, not less, the responsibility of the indiv
> zen for the successful functioning of tha
> This case thus raises issues not less than
> democratic society" (italics added).

See also *United States* v. *Congress of Industri
zations*, 335 U. S. 106, 148-149 (1948), where co
expressed for the individual union member who
payments to the union being diverted to political
contrary to his own views.

The essential function of the First Amendment is t keep free the channels of action and expression betwee government and the governed. Its roots are found in th historic conflicts that attended efforts to compel suppo or to quell criticism of government officers, candidates, an policies. The highest calling of the Court is to assure tha no man's voice in the processes of government is denie diminished, influenced, or coerced, directly or indirectl through the force of government itself.

In succeeding portions of this Part II of our brief, w shall elaborate the relationship of such political freedo to the freedoms of speech, press and association, and sha demonstrate that these fundamental freedoms are bein destroyed or grievously impaired through the operatio of the union shop contract.

2. *The Union Shop Contract Deprives the Individual Appellee of Freedom of Speech and of the Press.*

These two First Amendment Freedoms protect the in dividual's right to inform others of his opinions, howeve unpopular they may be. But the mass propagation o political and economic opinions requires money—substan tial sums. In political campaigns, for example, a sing nation-wide television or radio program (or an advertis ment appearing in many newspapers) may cost hundred of thousands of dollars. Such a political effort is finance by small contributions from many hundreds or thousand of individuals supporting that candidate and wishing t convince the public that he ought to be elected. Such i dividual support, even though in the form of financi contributions, surely is a form of expression that is pr tected by the First Amendment Freedoms of Speech an of the Press.

The labor union appellants channel the dues, fees an assessments exacted of the individual appellees into suc uses. We already have referred to special editions o "LABOR." Surely, it is a denial of Freedom of the Pres or of Speech to force one to contribute to the mass circ

lation of such newspapers where that indi
the candidate in whose favor such special ed

The Court will recall that those special e
the public that the views expressed are on
the members of appellants (and other "stan
unions).

The moneys of the individual appellees a
to support radio programs propagating eco
litical ideas of which they disapprove (R. 124
economic and political content of those p
be assessed by the summary each week in t
News" of one of the nightly broadcasts o
newscasters appearing on those programs
By being required to contribute to the ampli
voices on economic and political matters,
appellees are being denied freedom of spee

The record is full of other types of literatu
and economic matters to the increased circul
the individual appellees are required to co
the union shop agreement. For example:

"Labor Looks at the 85th Congress" (R.
No. 8; Tr. 394);
"*Social Security—What Ike Said Then*"
Pl. Ex. No. 11; Tr. 412);
"*Has Nixon Reformed?*" (R. 144; Pl. Ex
413);
"How Your Senators and Representative
144-146; Pl. Ex. Nos. 13-14; Tr. 414, 415
"Political Memos From COPE" (R. 147
Nos. 16-68; Tr. 417-469);
"Notes From COPE" (R. 148; Pl. Ex. N
470-480);
"COPE Reports" (R. 148-149; Pl. Ex. No
481-501);
"America Must Have" (R. 149; Pl. Ex.
503);
"We're in this Together" (R. 149; Pl. Ex.
"They Planned it That Way" (R. 150; Pl.
Tr. 507).

The Supreme Court of Georgia stated (215 G
R. 269):

> "One who is compelled to contribute the fruits
> labor to support or promote political or eco
> programs or support candidates for public of
> just as much deprived of his freedom of speech
> he were compelled to give his vocal support t
> trines he opposes. Abraham Lincoln asserted a s
> view when he said: 'I believe each individual is
> ally entitled to the fruits of his labor, so far a
> no wise interferes with any other man's right.'
> is a common saying that, 'Money talks—som
> louder than the spoken word.' In the case at b
> personal convictions of the plaintiffs on politic
> economic issues are being combatted by the
> their financial contributions to foster program
> ideologies which they oppose."

This statement correctly recognizes that the fre
of speech and of press go beyond the right of an indi
to utter his own thoughts vocally, or write them ou
vidually for transmission. Those rights are just as
invaded where an individual's money is exacted an
to propagate orally and in writing thoughts which he a

The intolerable position of the individual appell
brought home with telling force by the following stat
in the preamble to the Statute of Virginia for Re
Freedom (1786) drafted by Thomas Jefferson and
through the Virginia General Assembly by James Ma

> "To compel a man to furnish contributions of
> for the propagation of opinions which he disbe
> is sinful and tyrannical." Brant, *James Madis*
> *Nationalist 1780-1787* (Bobbs-Merrill, 1948) 35

In the area of freedom of speech there are certain
which all citizens of this free country would "hold
self-evident." One of these truths is:

> "Liberty of speech and of writing is secured
> constitution, and incident thereto is the *corr*

liberty of silence, not less important
(italics supplied). *Wallace* v. *Georgia*,
Ga. 732, 22 S. E. 579 (1893).

Clearly, the action of the appellant union
minority employees to speak on political s
less of their desires and contrary views i
fringement of the constitutional liberty o

A further self-evident truth is the one
above quotation from the Georgia Supren
decision in this case—namely, that it is a vi
dom of speech to compel a person to expre
are not his own as if they were his own. By
individual appellees to join and pay dues, a
resented politically by the unions, in order t
with the Southern Railway System, the unio
requiring the individual employees to expres
own. Not only are they compelled to espous
union "spokesman", causes which are abh
but they are forced to speak so loudly thr
tive voice that their individual voices could
the contrary. Indeed, the enforced expressi
collective voice—heard throughout the Natio
broadcasts and newspapers—is so overwhel
courage an individual dissident employee
tempting to state the contrary view. Thus f
vidual expression is not only drowned out
collective expression, but it is for all pra
suppressed through hopeless discouragemen
California, 361 U. S. 147 (1959), where th
out that indirect suppression and discour
freedom of speech and press is unconstitu

Peonage is unlawful in this country. Intel
of the type advocated by the appellant union
ly and vigorously condemned by this Court.
sion through the collective voice is degradi
rable to the forced "confessions" which hav
trials in the "Iron Curtain" countries. Certa

which countless times has risen to the defense of indi
liberty and freedom of individual expression, could no
done the requirement that an individual accept po
representation by his political foes.

In the flag-salute case, this Court condemned as
fringement of First Amendment rights the use of go
mental power exerted through the school to com
child to engage in an abstract ritual of adherence t
national symbol of liberty and justice. *West Virginia
Board of Education* v. *Barnette*, 319 U. S. 624 (1943).
much less can the federal government compel a man, th
a union and at the peril of his livelihood, to signif
adherence to particular political candidates and legis
programs, with support in the form of hard cash! I
Barnette case, Mr. Justice Jackson said (319 U. S. a
642):

> "The very purpose of a Bill of Rights was to
> draw certain subjects from the vicissitudes of pol
> controversy, to place them beyond the reach of
> jorities and officials and to establish them as
> principles to be applied by the courts. One's rig
> life, liberty, and property, to free speech, a free
> freedom of worship and assembly, and other f
> mental rights may not be submitted to a vote;
> depend on the outcome of no elections.
>
> • • • • •
>
> "We set up government by consent of the governed
> the Bill of Rights denies those in power any lega
> portunity to coerce that consent . . .
>
> "If there is any fixed star in our constitutional
> stellation, it is that no official, high or petty, can
> scribe what shall be orthodox in politics, nationa
> religion, or other matters of opinion *or force ci
> to confess by word or act* their faith therein" (i
> added).

Again, in *Wieman* v. *Updegraff*, 344 U. S. 183 (1
the Court held that expression of political adheren
the form of an oath could not, in keeping with the

stitutional command, be required as a condition to public employment.

This Court has repeatedly struck down monetary exactions in the realm of thought, belief and speech. Most recent is the decision in *Speiser v. Randall*, 357 U. S. 513 (1958). There California offered a tax exemption to veterans who would sign a declaration that they did not advocate forcible overthrow of the government. It deserves emphasis that freedom of speech thus was not impaired in the sense of the infliction of punishment or a penalty for the expression of proscribed ideas. The "freedom of speech" at stake was the freedom to remain silent, the freedom not to affirm or support a specified belief. It is the same freedom claimed in this case on behalf of these individual appellees and the class they represent.

This technical distinction of form did not deter the Court. The statute was struck down. Speaking for the majority, Mr. Justice Brennan wrote (357 U. S. at 518-519):

> "It is settled that speech can be effectively limited by the exercise of the taxing power. Grosjean v. American Press Co., 297 U. S. 233. To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech . . . It has been said that Congress may not by withdrawal of mailing privileges place limitations upon the freedom of speech which if directly attempted would be unconstitutional. See Hannegan v. Esquire, Inc., 327 U. S. 146, 156; cf. Milwaukee Publishing Co. v. Burleson, 255 U. S. 407, 430-431 (Brandeis, J., dissenting). This Court has similarly rejected the contention that speech was not abridged when the sole restraint on its exercise was withdrawal of the opportunity to invoke the facilities of the National Labor Relations Board, American Communications Assn. v. Douds, 339 U. S. 382, 402, or the opportunity for public employment. Wieman v. Updegraff, 344 U. S. 183. So here, the denial of a tax exemption for engaging in certain speech necessarily will have

> the effect of coercing the claimants to refrain from the proscribed speech."

Looking through form to the substantive effect of the exactions to which the plaintiffs are subjected here, the result is the same. They are forced to supply funds for political candidates and ideologies to which they are opposed. To express their individual preferences and beliefs, and to support their own choices, they are compelled to pay twice, while other members can satisfy their political allegiances by the single union contribution. The practical effect is to penalize plaintiffs for their beliefs.

It must not be forgotten that the historical origin of the First Amendment was an attempt to impose money exactions for the support of religious beliefs, not direct suppression by penalizing expression. See I Stokes, *Church and State in the United States* 341-342, 388 (1959). This Court has repeatedly recognized this historical background to be authoritative on the meaning of that Amendment, and to be equally applicable to all forms of thought and belief. See *Reynolds* v. *United States,* 98 U. S. 145, 163-164 (1879); *Everson* v. *Board of Education,* 330 U. S. 1, 13 (1947). "Freedom of religion and freedom of speech guaranteed by the First Amendment give more than the privilege to worship, to write, to speak as one chooses; they give freedom not to do or act as the government chooses. The First Amendment in its respect for the conscience of the individual honors the sanctity of thought and belief." *Public Utilities Comm'n* v. *Pollak,* 343 U. S. 451, 467-468 (1952) (Mr. Justice Douglas, dissenting).

Entirely apart from the degrading effect on the individual of compulsory political representation, the form of intellectual bondage advocated by the appellant unions would be destructive of our free institutions. As this Court said in *Terminiello* v. *City of Chicago,* 337 U. S. 1, 4 (1949):

> "The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in De Jonge v. Oregon, 299 U. S.

353, 365, 57 S. Ct. 255, 260, 81 L. Ed. 278, it is
through free debate and free exchange of ideas
government remains responsive to the will of
people and peaceful change is effected. The righ
speak freely and to promote diversity of ideas
programs is therefore one of the chief distinct
that sets us apart from totalitarian regimes."

What is the opportunity for "diversity of ideas" and w
distinguishes this Nation from totalitarian regimes if
mendous labor organizations are permitted to become
practical effect the sole spokesmen for their willing and
willing members? As this Court further said in the *T*
miniello case (337 U. S. at 4-5):

"There is no room under our Constitution fo
more restrictive view. For the alternative would l
to standardization of ideas either by legislatu
courts, or dominant political or community groups."

Such standardization of ideas is, of course, the objective
the appellant unions, despite its obvious repugnance to
Bill of Rights.

In *Roth* v. *United States*, 354 U. S. 476, 484 (1957)
Court expressed its concern for *individual* political fr
dom:

"All ideas having even the slightest redeeming so
importance—unorthodox ideas, controversial ide
even ideas hateful to the prevailing climate of opin
—have the full protection of the guaranties, unl
excludable because they encroach upon the limi
area of more important interests."

The Court said further (354 U. S. 488):

"The fundamental freedoms of speech and press h
contributed greatly to the development and well-be
of our free society and are indispensable to its c
tinued growth. Ceaseless vigilance is the watchw
to prevent their erosion by Congress or by the Sta
The door barring federal and state intrusion into t
area cannot be left ajar; it must be kept tightly clo

and opened only the slightest crack necessary to prevent encroachment upon more important interests."

What "more important interests" could possibly be suggested as a reason for destroying the right of these individual appellees to be heard effectively on political subjects? Certainly there is no national interest in suppressing their political ideas if none could be found in the cases cited above where subversion and obscenity were alleged. No national interest has been declared by Congress to require suppression of the political ideas of the minority employees. There is no suggestion of a Congressional purpose to "standardize ideas", and the national interest, as repeatedly recognized by this Court, is opposed to such standardization.

Not only is there no Congressional declaration of a purpose to be served by suppressing the views of minority employees or compelling them to accept political representation by their political foes, but, to use the language of the Court in *Sweezy* v. *New Hampshire,* 354 U. S. 234, 251 (1957), in a comparable situation:

> "We do not now conceive of any circumstance wherein a state interest would justify infringement of rights in these fields."

If, as the Court held in *Everson* v. *Board of Education,* 330 U. S. 1, 15 (1947), government may neither "force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion," are not political beliefs and rights of political expression entitled to the same protection, under the same Amendment? As this Court said in *Thomas* v. *Collins,* 323 U. S. 516, 531 (1945):

> "The First Amendment gives freedom of mind the same security as freedom of conscience."

Whether or not the First Amendment freedoms are entitled to a preferred position, these individual appellees

have a right to express their own political views an
not be compelled by agents forced upon them by g
mental action to accept and pay for political represen
by their political foes—collective representatives with
great power, resources and amplification that they ca
do submerge and suppress the views of minority emp
groups.

In Part II A of this brief it is demonstrated tha
federal government is the decisive force in compellin
individual appellees to contribute funds to the unions
condition of continued employment. This means that
government which requires the payments which appe
use for political purposes. Such a result is contrary
principle, implementing the spirit of the Constitution
impelled by its letter, that political activity must b
to individual conscience, choice and belief, without su
or support from government.

The examples of this pervasive federal policy are l
A few will suffice to make the point. During the last
this Court applied that policy in *Cammarano* v. *U*
States, 358 U. S. 498 (1959), a case involving deducti
for income tax purposes of contributions to an organiz
engaged in political activity, to defeat a proposal that
have driven the taxpayer out of business. The op
adopts the language of Judge Learned Hand in holdin
the federal government's "sharply defined policy" fo
support, direct or indirect, for "political agitation,
however innocent the aim. . . . Controversies of that
must be conducted without public subvention . . .
U. S. at 512. The denial of the claim that political con
tions were "ordinary and necessary" business exp
meant that the taxpayers were, as Mr. Justice Harla
it, "simply being required to pay for those activities en
out of their own pockets, as everyone else engagi
similar activities is required to do . . . " The legis
history, therefore, expressed "a determination by Con
that since purchased publicity can influence the fa
legislation which will affect, directly or indirectly,

the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned." 358 U. S. 513.

Elsewhere, Congress has carried forward this "sharply defined policy" by prohibiting the use of federal employment as a club to coerce political contributions or activity, assuring that government employees will not "be subjected to pressure for money for political purposes." *United States* v. *Wurzbach,* 280 U. S. 396, 398 (1930). The purpose was elaborated by Mr. Justice Douglas, concurring in part and dissenting in part in *United Public Workers* v. *Mitchell,* 330 U. S. 75, 125-26 (1947):

> "The public interest in the political activity of a machinist or elevator operator or charwoman is . . . in the preservation of an unregimented industrial group, in a group free from political pressures of superiors who use their official power for a partisan purpose. Then official power is misused, perverted. The Government is corrupted by making its industrial workers political captives, victims of bureaucratic power, agents for perpetuating one party in power."

Here, as demonstrated below (Appendix, pp. 11a-21a), the power of government is being used by the unions to coerce contributions used by the unions "for perpetuating one party in power."

A full chapter of Title 18 of the United States Code is occupied by Congressional enactments embodying the policy that no benefit or economic advantage dependent upon federal power should be used as the instrument of political coercion. Chapter 29, §§ 591-612, *passim,* Title 18, United States Code. Yet, the Court is asked by the appellants in this case to hold that Congress can and did subject railroad employees to the threat of loss of livelihood as the means of exacting political contributions.

Congress has effectuated this fundamental policy in another direction as well. In addition to protecting employees whose jobs may be affected by federal power, the legis-

lature has forbidden political contributions by o
tions created or existing by virtue of federal pc
exercising rights or powers conferred by the fede
ernment. It is therefore "unlawful for any nation
or any corporation organized by authority of any
Congress, to make a contribution or expenditure in
tion with any election to any political office . . ."
610, Title 18, United States Code. A licensee for r
television broadcasting enjoys a benefit flowing fr
eral authority and is, pursuant to this policy, pr
to use the power for partisan purposes. Equal tin
be afforded to all candidates on the same terms,
censorship, under Section 315 of the Federal Co
cations Act of 1935, 48 Stat. 1088 as amended, 47 U
§ 315(a). See *Farmers Union* v. *WDAY*, 360 U.
(1959). The defendant unions here enjoy analogo
eral benefits in their designation as exclusive bar
agents for all employees in a craft or class, with at
powers and protections.

In an effort to bolster their remarkable claim of
to exact political tribute, the appellants assert bald
there is nothing unusual in the situation because
and lawyers are regularly required to make contri
to political candidates as a condition to the right to
in the profession (appellants' brief, pp. 47-48). Th
answer is that the assertion is simply untrue. H
elsewhere, the appellants have ignored the critical
tion made plain in the *Hanson* case between a leg
to *join* an organization and a duty to pay whate
majority may demand for support of any ideolog
gram, candidate, or policy. Bare membership ma
questions of freedom of association, but it does not
what the appellants seek to justify. The appellan
referred to no decision which supports their ext
nary statement that the practice of law may l
ditioned on partisan political adherence; it is
predict that none will be found. The attempt to glo
the fact that the decisions are aligned in two

separate categories cannot succeed. An integrated bar is permissible, as the *Hanson* case observes. A voluntary bar association, which the judge or lawyer is free to join or not to join, and from which he is free to resign in protest, may engage in partisan political activity. But the two propositions may not be combined. It should be noted that the two cases cited in the appellants' brief (pp. 44-45) for the proposition that bar association endorsement of candidates for judicial office or the position of state's attorney may be allowed were decided in states *not* among those having an integrated bar according to appellants' own list (appellants' brief, p. 47, note). In fact, those two cases did not involve *state* bar associations. *LaBelle* v. *Hennepin County Bar Ass'n*, 206 Minn. 290, 288 N. W. 788 (1939); *Smith* v. *Higinbothom*, 187 Md. 115, 48 A. 2d 754 (1946). Certainly this Court has never approved a plan to make the right to pursue a legal calling conditional upon partisan political affiliations and support, and in view of its vigorous protection of the lawyer's beliefs and convictions, it is safe to predict that the Court will never sustain such oppression. See *In Re Sawyer*, 360 U. S. 622 (1959); *Schware* v. *New Mexico Bar Examiners*, 353 U. S. 232 (1957); *Konigsberg* v. *California State Bar*, 353 U. S. 252 (1957).

Appellants refer particularly to the situation in Wisconsin and rely heavily on *In re Integration of the Bar*, 5 Wis. 2d 618, 93 N. W. 2d 601 (1958). That case, however, is merely typical of state decisions sustaining integrated bars as facilities of state supreme courts for maintaining supervision over the practice of law. It points out that an integrated bar is actually a part of the state government. Thus, the Supreme Court of Wisconsin said (93 N. W. 2d at 603):

> "... The practice of law in the broad sense, both in and out of the courts, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of law."

Appellants say that in that decision the Supre
of Wisconsin ruled that the integrated bar was to
spend its money for any purposes it pleased, includi
cal activities. This simply is not true. On the cont
Wisconsin court emphasized the limited purpose
integrated bar and the accountability of the ba
court (93 N. W. 2d at 605):

> ". . . The integrated State Bar of Wisconsin
> pendent and free to conduct its activities w
> framework of . . . [its] Rules and By-laws.
> their confines, this court expects the Bar to a
> and independently on all matters which *pro*
> *purposes for which the Bar was integrated s*
> *the general supervisory power of the court*"
> added).

Appellants flatly state, at page 46 of their b
courts in integrated bar cases have rejected argu
all respects similar to" the arguments of appelle
case at bar. In support of this confident assert
cite *In re Florida Bar,* 62 So. 2d 20 (1952), a
Mundy, 202 La. 41, 11 So. 2d 398 (1942). Howev
citations too are wide of the mark.

In re Florida Bar did not even involve an i
attorney. It was a petition of the integrated ba
thority to increase annual dues. The Supreme
Florida allowed the petition, providing that due
be set at an annual meeting each year and shoul
ceed $10.00 per year. By no stretch of the ima
can the case be read as authority for an integr
to force attorneys, as a condition of practicing
support political, propaganda, and legislative pro
which they are opposed.

In re Mundy is simply one more of the line
cases holding that a state can integrate its bar an
all attorneys in the state, as a condition of practi
to pay the annual dues of the state bar associatio

. As in *In re Florida Bar*, there is nothing in *In re Mundt* that could conceivably be construed as a ruling that an attorney can be barred from the practice of law for refusal to support political, propaganda, and legislative activities of an integrated bar association.

What appellants have done is clear. They have taken two cases involving voluntary bar associations, wherein it was held that political activities of such organizations were not within corrupt practices legislation. To these appellants have added three cases holding that attorneys can be compelled to belong and pay dues to integrated bar associations, in not one of which was a word said about political, propaganda, or legislative activities of such associations. From this mixture, appellants have derived a "settled rule of law" that attorneys can—and regularly are—forced, as a condition of practicing law, to pay dues to an integrated bar association which may be used by the association to support political, propaganda, and legislative activities to which the attorney is opposed.

There are, in fact, no state court decisions holding that an attorney may be compelled, as a condition of pursuing his profession, to contribute financial support to political propaganda, or legislative campaigns of an integrated bar association.

One may question whether involuntary support of partisan political activity by an integrated bar association will ever come before the courts. It is difficult to imagine that such an association, constituting a part of state government and acting directly under the supervision of the courts, would ever engage in partisan politics, for that would mean that the state itself was engaging in politics. The picture of a state supreme court endorsing and supporting a slate of candidates in a contested election is wholly at odds with our concept of the electoral system.

The unions contend that forced political representation by them of all employees is necessary for the accomplishment of their objectives, and, because it is necessary, it is also justified. Perhaps the clearest statement of that phi

losophy of the unions is contained in the l
as "amicus curiae" by the AFL-CIO, whe
(p. 12):

> "Assume that a union is engaging in
> action when it spends funds on political
> so is subject to the due process restri
> Fifth Amendment. Nonetheless, the n
> governmental body and the nature and
> the activities proper to it surely can b
> only on the basis of the peculiar needs wh
> its formation. As was said by a politica
> whose credentials antedate even those o
> 'A state arises out of the needs of man

While the authority quoted by the AFL-C
guished, he is so ancient (Plato, *The Repub*
60 (Modern Library ed.)) that he anteda
this Court but also the more modern concep
ment on which our forefathers founded thi
this Nation, it has always been held to be a
truth (Declaration of Independence) "That to
rights [Life, Liberty and the pursuit of hap
ernments are instituted among Men, *derivi*
powers from the consent of the governed" (i
Thus, if there is indeed a "labor state", any
it may possess must be derived "from the c
governed"—not from imposition by legislati
usurpation by the claimed political repre
grounds of "necessity". Alleged "necessity"
consent of the governed has formed the ba
totalitarian government in the history of man

3. *Appellants Force Ideological Conformity Through "Political Education."*

The trial court found (R. 103) that fund
individual appellees under the union shop a
used "to impose upon the plaintiffs and the cla
sent, as well as upon the general public, confor

doctrines, concepts, ideologies and programs" espoused appellants and opposed by the individual appellees. pages 39 and 88-89 of their brief, appellants assert there is no record basis for such a finding, and that terms of the union shop agreement itself preclude suc finding since (brief, p. 89):

> "The agreements themselves, as well as Section Eleventh, provide that if membership in the labor ganization is denied or terminated for any reason ot than the non-payment of uniform dues, fees and sessments (not including fines and penalties), union shop agreement would not be applicable to such person. Under those provisions, no one can required to conform to any ideologies or concepts programs; indeed, he is free to oppose them."

That argument is specious—it begs the very questior issue here. It accuses this Court of insincerity in promis in the *Hanson* case, to protect against the use of the un shop "as a cover for forcing ideological conformity."

Appellants apparently would have this Court const "forcing ideological conformity" as embracing only a s ation where the union appellants could in fact compel employee to *believe* a union precept in order to retain job. Of course, such a situation could not arise since the employee's actual beliefs could not be known and the Act clearly would not permit discharge for a fail or refusal to believe. Thus appellants are creating demolishing a straw man.

The threshold "condition" or "term" imposed upon ered employees is the tender of periodic dues, fees assessments—the condition held lawful and constitutio in *Hanson*.

Once the money is in the union's till, they say (ap lants' brief, p. 27; see also brief tendered by AFL-C pp. 8-9):

> "There is no condition or limitation based upon use to which the labor organization puts the fees, d and assessments."

Appellants say further (brief, p. 40):

"Obviously using funds to pay for radi
publications does not impose conformity.
of the employees, equally with each n
public generally, free to make up his ow
free to listen or read or not to listen or

The issue is not so simple. We again refe
Mr. Justice Douglas' dissenting opinion i
U. S. at 467-469):

"Liberty in the constitutional sense mu
than freedom from unlawful governme
it must include privacy as well, if it is t
tory of freedom. The right to be let a
the beginning of all freedom."

* * * * *

"The First Amendment in its respect for
of the individual honors the sanctity o
belief. To think as one chooses, to beli
wishes are important aspects of the
right to be let alone.

"If we remembered this lesson taught
Amendment, I do not believe we would
erty' within the meaning of the Fifth A
narrowly as the Court does. The present
a form of coercion to make people listen.
are of course in a public place; they are
traveling to and from home. In one se
said that those who ride the streetcars
tarily. Yet in a practical sense they are
since this mode of transportation is t
for many thousands. Compulsion whic
circumstances can be as real as com
comes from a command.

"The streetcar audience is a captive a
there as a matter of necessity, not of ch
is in a public vehicle may not of cours
the noise of the crowd and the babble of

who enters any public place sacrifices some
privacy over and beyond the risks of travel.

"The government may use the radio (or tele
on public vehicles for many purposes. Today
use it for a cultural end. Tomorrow it may us
political purposes. So far as the right of pri
concerned the purpose makes no difference. Th
selected by one bureaucrat may be as offen
some as it is soothing to others. The news com
tor chosen to report on the events of the da
give overtones to the news that please the
head but which rile the streetcar captive au
The political philosophy which one radio s
exudes may be thought by the official who ma
the streetcar programs to be best for the wel
the people. But the man who listens to it on h
to work in the morning and on his way home a
may think it marks the destruction of the Repu

"One who tunes in on an offensive program a
can turn it off or tune in another station, as he
One who hears disquieting or unpleasant progr
public places, such as restaurants, can get up and
But the man on the streetcar has no choice bu
and listen, or perhaps to sit and to try *not* to

"When we force people to listen to another's
we give the propagandist a powerful weapon. T
is a business enterprise working out a radio pr
under the auspices of government. Tomorrow
be a dominant political or religious group. Too
purpose is benign; there is no invidious cast
programs. But the vice is inherent in the s
Once privacy is invaded, privacy is gone. Once
is forced to submit to one type of radio progr
can be forced to submit to another. It may be
short step from a cultural program to a politic
gram.

"If liberty is to flourish, government should
be allowed to force people to listen to any rad
gram. The right of privacy should include th
to pick and choose from competing entertain
competing propaganda, competing political

> ophies. If people are let alone in those choices, the right of privacy will pay dividends in character and integrity. The strength of our system is in the dignity, the resourcefulness, and the independence of our people. Our confidence is in their ability as individuals to make the wisest choice. That system cannot flourish if regimentation takes hold. The right of privacy, today violated, is a powerful deterrent to any one who would control men's minds."

We have shown above how appellants seek to equate the word "forcing" in *Hanson* with "commanding" or "expressly requiring".

Logically extended, the appellants' argument would require the Court to hold that freedom of thought, belief, conscience, and speech is not infringed by any monetary tax, fine, or penalty, nor indeed by imprisonment or any punishment short of death, since the mind would remain free in any case to believe. The First Amendment does not yield to such word play.

The contention of the appellants that, in effect, the employees need not be affected by constant exposure to political and ideological propaganda is contrary to the considered conclusions of the courts in cases involving religious instruction in the schools. In *Schempp* v. *School District of Abington Township, Pa.*, 177 F. Supp. 398, 404-405 (E. D. Pa. 1959), the Court said:

> "The daily reading of the Bible buttressed with the authority of the State, and more importantly to children, backed with the authority of their teachers, can hardly do less than inculcate or promote the inculcation of various religious doctrines in childish minds. Thus, the practice required by the statute amounts to religious instruction, or a promotion of religious education. It makes no difference that the religious 'truths' inculcated may vary from one child to another. It also makes no difference that a sense of religion may not be instilled. . . . In our view, inasmuch as the Bible deals with man's relationship to

God and the Pennsylvania statute may require a daily reminder of that relationship, that statute aids all religions. Inasmuch as the 'Holy Bible' is a Christian document, the practice aids and prefers the Christian religion."

The Court there further said (177 F. Supp. at 406):

"The argument made by the defendants that there was no compulsion ignores reality and the forces of social suasion. Tudor v. Board of Education, 1953, 14 N. J. 31, 100 A.2d 857, at pages 866-868, 45 A. L. R. 2d 729."

The Court further said (177 F. Supp. at 407):

"The daily reading of the Bible operating upon the receptive minds of children els them to listen with attention. This indoctri them with a religious sense. This under the ci. mstances at bar constitutes an interference with the free exercise of religion."

While the *Schempp* case involves children, it could hardly be argued that adults are not susceptible to bombardment with political propaganda such as appellants incorporate in their various publications.

In *McCollum* v. *Board of Education*, 333 U. S. 203, 212 (1948), this Court clearly indicated that, even if religious instruction does not favor one religion over another, the power of government may not be used to aid in the instruction:

"Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State."

Similarly, in this case, the federal government, through the union shop which it has sponsored and which it enforces

(see Part IIA of this brief), offers "invaluable aid" to t unions by giving them a "captive audience" in the form all of the employees who are compelled to join the uni in order to retain their jobs.

The author of the majority opinion in *Hanson* also wro the language quoted above from *Pollak*. We think that, co sistently, in using the word "forcing" in *Hanson*, he mea it in the sense defined above—namely, a "coercion" "compulsion" which may come from "circumstances" as w as from a "command". In this light, the language in *Hans* directly applies, since the dues, fees and assessments exact from individual appellees under the union shop agreeme are being used "as a cover for forcing ideological co formity." The "circumstances" which we claim amount such coercion are set forth below:

First, the employee is compelled by the federal gover ment, the railroad employer, and the labor union to identi himself as a member of a group—the labor union—ev though such identification is only the minimum acquiescen in *pro-forma* membership. Whatever his attitude towa the union has been before, it is different after this cer monial act of joining or paying dues. The very ritual dues payment or initiation contains an element of ment submission. Compare the compulsory ritual in the *Barnet* (flag salute) case, *supra*.

Furthermore, while some tough-minded individuals, su as the named appellees, may resist regimentation, it probable, as Congress, the unions and the railroads all ha realized, that the great preponderance of employees, up being told they must join the union, will join—not just a *pro-forma* sense, but in a genuine sense.

In any event, an initiation fee, or reinstatement fee, a periodic dues are paid to the union. So far, according *Hanson*, no constitutional rights have been infringed. B what is it that the employee is required to pay for?

The record shows that appellees Davis, Cobb and Stre have been required to pay initiation fees and reinstateme

fee and $3.00 per month in dues to the appellant, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRC"), since June, 1958 (R. 203-204).

The "official publication" of the BRC is "The Railway Clerk" (R. 198, 199; Tr. 915—Constitution BRC, p. 54). Members of BRC must contribute 30¢ of initiation fees, 45¢ of reinstatement fees and 10¢ of each month's dues ($1.20 per year) to pay for "The Railway Clerk" (R. 190; Tr. 915—Constitution BRC—pp. 64, 65, 93), which a stranger could subscribe to for one dollar a year (*id.*, p. 55).

Employees required to join the Brotherhood Railway Carmen of America must pay for the "Carmen's Journal," the official organ of that union (R. 190, 199; Tr. 910, Constitution—Brotherhood Railway Carmen of America, p. 23)—10¢ per month if a coach cleaner, 11¢ per month if a helper or apprentice and 12½¢ per month if a mechanic (*id.*, pp. 20, 23, 49).

Signalmen must pay $1.80 per year for the "The Signalmen's Journal" (R. 190, 199; Tr. 911, Amendments to Signalmen's Constitution, p. 8).

Electrical Workers must pay 10¢ per month for "The Electrical Workers Journal," the official publication of the International Brotherhood of Electrical Workers ("IBEW") (R. 190, 199; Tr. 912, IBEW Constitution, pp. 26-27, 28).

Train dispatchers must pay $2.00 per year as subscriptions to "The Train Dispatcher" (R. 190, 199; Tr. 912, Constitution of the American Train Dispatchers' Association, p. 36).

Boilermakers and Blacksmiths pay 16¢ per month for the "Boilermakers and Blacksmiths Journal" (R. 190, 199; Tr. 913, Constitution—Boilermakers and Blacksmiths, pp. 33, 41),

Maintenance of Way employees must pay for the "Maintenance of Way Journal" and "LABOR." No specific allocation of dues is made to those periodicals, as in the situations mentioned above, but the subscription price of the

"Maintenance of Way Journal" to outsiders is $2.00 year (R. 190, 199; Tr. 913, Maintenance of Way Cons tion, p. 33). "LABOR's" subscription rate is $1.00 per (Tr. 508).

A part of the $1.30 monthly per-capita tax which machinist must pay includes the subscriptions paid to " Machinist" (R. 190, 199; Tr. 914, I.A.M. Constitutio 19).

Telegraphers must pay $1.50 per year for "The Te rapher" (R. 190, 199; Tr. 915, Telegraphers' Constitut p. 33).

Sheet metal workers must pay $1.00 per year for "Sheet Metal Workers Journal" (R. 190, 199; Tr. Sheet Metal Workers' Constitution, p. 82).

While employees represented by other union appell must subscribe to the official journals of those appell (R. 190, 198-199), the precise amount of the required due located to such subscription is not of record as to the "F men and Oilers Journal", the "Washington Log Book" the Masters, Mates and Pilots, the "Railroad Yardmas or the "American Marine Engineer."

The required subscription to these periodicals is, submit, a direct violation of the individual appellees' F Amendment rights, and is an "exaction of dues, initia fees, or assessments" which "is used as a cover for f ing ideological conformity."

Appellants may argue that the union constitutions sh ing that a part of the employees' dues would be used to chase subscriptions to such periodicals was of record *Hanson* (Tr. (451) 101 *ff.*). But the Court then had way of knowing the ideological and political content of s journals; for all that record showed they were dev 100% to genuine collective bargaining matters. Here record clearly shows the content and purpose of the publ tions.

As pointed out above, the appellants argue (brief, p. 4

> "Obviously using funds to pay for . . . publicati does not impose conformity. It leaves each of the

> ployees, equally with each member of the public generally, free to make up his own mind, indeed, free to . . . read or not to . . . read."

We disagree. Is this Court to hold that a man may be required, as a condition of continued employment, to subscribe to "The Daily Worker", or to "Nation's Business", or to the official publication of a political party, and that the requirement does not constitute "forcing ideological conformity"? The political and ideological content of the labor union journals makes the principle equally applicable here.

Even though no one may stand over the employee with a club and force him to read the journal, nevertheless he bought the journal with his own money and he is no more expected simply to throw it away than the plaintiff in *Pollak* was expected to get off the streetcar and walk. Furthermore, as an inspection will show, even the front covers frequently carry an ideological or political message—and the journals also carry some useful non-political information. The unions are not wasting their efforts—they know the vast majority of employees will be affected by their propaganda.

But the important thing to remember is that appellants and their affiliates do not rely on coercing a particular individual employee. We are dealing here with enormous numbers of people and a mass response is the objective. That can be achieved though the techniques which we will describe below, and the result is the desired conformity of action and thought by a high percentage of those exposed to the unions' political education. We think the individuals' constitutional rights are infringed by such exposure, even though actual conformity is not achieved in some individual cases.

Mr. George L. O'Brien, Assistant General President, Brotherhood Railway Carmen of America, writing in March, 1956, said (Tr. 688, p. 10):

> "This year, 1956, will be the first year in which all labor organizations in the United States will be united

in their political efforts. The leaders of our
parties are very much alive to this fact an
quently are now centering their attention on
every activitiy of the leaders of the trade unic
reason for this close study is quite obvious—
bined membership of labor today is estimat
seventeen million [the motion for leave to f
amicus curiae filed by the AFL-CIO claims 13
Without doubt organized labor constitutes a
dous block of votes, which in the opinion of thi
could very easily decide a national election—
would but vote unitedly.

"The $64,000 Question

"The $64,000 question is, will they? Will
and file of labor listen to the advice of their
on political candidates? Will these same rank a
follow the advice given and cast their votes
ingly?"

The "$64,000 question" posed by Mr. O'Brien is a
one. The gravity of the situation is due to two
(1) the currently effective political parties in our tw
system are organized (or divided), by and larg
vertical basis (cutting across all segments and gr
voters) whereas the hoped-for united appeal of th
is on a horizontal basis—seeking to convert an entir
and (2) that group is of sufficient size, as Mr. O'Brie
out, to carry without question any contest, preside
otherwise, in which it is able to mobilize the entir
(and the voters within the group's sphere of influe
hind the same candidate. For example, in the 19
dential race, there were approximately 60 million v
it is clear that 13,000,000 votes solidly behind one c
from one group only would be more than enough
cide the election. Mr. Alexander Barkan, COPE's
Director, gave a tentative "answer" to the "$64,0
tion" (American Federationist, May, 1958, Tr. 869
11):

"We Can Do the Job"

• • • • •

"In February, 1957, the [Survey Research Center the University of Michigan] published a study show the composition of the American electorate in the 1 election. It estimated that 15 percent of the popu tion was strongly Republican, 14 per cent weakly publican, 23 percent independent, 23 percent wea Democratic, 21 percent strongly Democratic and per cent non-political.

"Lumping those without strong views together, comes out 15 percent Republican, 21 percent Dem cratic, 60 percent without fixed views and 4 perc with no views at all.

"In the 1956 election President Eisenhower got a s stantial majority of the 60 percent who occupy middle ground between strongly Republican a strongly Democratic.

"Against that background it is useful to look at way people classified as 'workers' voted. Union me bers voted 52 per cent for the Democratic candid for president who was recommended by the AF CIO General Board and 48 percent for the Republic candidate. The contrast with the voting behavior the general public, of which union members are a pa is marked. The contrast with the voting behavior the non-union 'workers' is even greater.

"While 52 per cent of the union 'workers' voted the candidate recommended by the AFL-CIO, only per cent of the non-union 'workers' voted for the sa candidate. Sixty-five per cent of the non-union work voted for the opposing candidate, while 48 per cent the union 'workers' voted for the same candidate."

• • • • •

"More detailed study confirmed the findings. In th unions *which expressed a clear political preference their publications,* whose leaders took strong sta and gave direction to their members, the vote backed candidates was higher than in unions in wh this was not the case" (italics added).

Of course, it is public knowledge that the u
effort of the AFL and the CIO was felt with
fect in the 1958 Congressional races. Assu
tinuation of this trend, we will have what
National one-party system—a long step towar
ism. The ultimate result of the unconstitution
of the union shop agreement (and many oth
terrifying indeed.

The record contains copies of, and excer
pellants' official journals as follows:

"Boilermakers and Blacksmiths Journal"
Exhibits 231-237, 243, 247-252; Defenda
1-7, 12-17; Tr. 632-658);
"Sheet Metal Workers' Journal" (Plainti
253-260; Tr. 659-666);
"Electrical Workers' Journal" (Plaintiffs'
267; Defendants' Exhibits 18-30; Tr. 6
"The Carmen's Journal" (Plaintiffs' Exhi
Tr. 687-695);
"The Maintenance of Way Journal" (Plaint
277-282; Tr. 696-701);
"The Telegrapher" (Plaintiffs' Exhibits
702-704);
"The Railroad Yardmaster" (Plaintiffs'
291; Tr. 705-710);
"Firemen and Oilers Journal" (Plaintiffs'
297; Tr. 711-716);
"The Signalmen's Journal" (Plaintiffs'
301; Tr. 717-720);
"The Train Dispatcher" (Plaintiffs' Exhi
Tr. 721-723);
"The Railway Clerk" (Plaintiffs' Exhibits
389; Tr. 737-739; 870-880); and
"The Machinist" (Plaintiffs' Exhibits 390-
909).

With respect to all such official journals (in
American Marine Engineer" and the "Was
Book" of the Masters, Mates and Pilots, of wh
are of record) it is stipulated that the repo
is "of a non-objective type and is designed to

readers thereof toward the particular political phi
espoused by that publication, but to which plaintiffs
vening plaintiffs, and the class they represent are op
(R. 189-190).

Appellants' official journals publish, among other
the following (the first numerical reference is to th
of the unprinted official transcript; numbers in
theses refer to the pages of lengthy documents):

1. *RLPL's endorsements of candidates*: 636; 6
20); 646 (21-23); 690 (4ff.); 691 (7); 702 (9
(39-40); 704 (4-6); 707 (5); 712 (2); 713 (2); 87
871 (9); 872 (16); 873 (16) 874 (8-9); 877 (
878 (6);

2. *COPE's Voting Records 1947-1956*[1]: 646 (

3. *Appeals to support RLPL, MNPL and COP*
655; 658 (inside back cover); 660 (5); 678; 67
689 (front cover, 4); 690 (3, 7, 9); 693 (25); 694
695 (4, 11); 698 (33); 704 (12, 18); 705 (74); 70
707 (47); 708 (3); 709 (5); 710 (11); 712-(1); 71
cover); 715 (back cover); 716 (7-8); 717 (137
(183); 870 (8, 12, 13); 872 (16); 874 (back
881-885;

4. *Appeals to register and vote*: 640, 643, 645
cover, 5, 6, 14, 16-17); 646 (4, 6); 650, 660 (front
661 (front cover); 666 (7); 673; 707 (front co
12); 711; 712 (front cover); 713 (inside back
721 (182); 875 (14, 19); 876 (23); 877 (10, back

5. *Politically and ideologically slanted editori*
editorial comment: 645 (8-9); 649; 654; 655; 661
front cover); 662 (2-3); 664 (5); 678; 692 (16); 6
694 (2); 696 (3, 7); 697 (inside front cover
(inside front cover); 699 (inside front cover);
9); 701 (inside front cover); 705 (5); 706 (3-
(3); 709 (23); 711 (1); 871 (14-15); 872 (
873 (14); 875 (15); 876 (15); 877 (6, 10, 13); 87
879 (17); 892; 900;

[1] Each union member was sent, at his home address, a
this "Voting Record" (Tr. 279-280).

6. *Politically slanted news,*[1] *articles, st*
tures: 242; 637; 645 (10, 12); 646 (7, 2
660 (7); 661 (2); 662 (10); 664 (9); 665
691 (5); 692 (18); 698 (9); 699 (18-2(
cover); 701 (14); 703 (43); 705 (26);
707 (12, 13, 28, 32-34, 35, 39); 709 (23
13, 15); 713 (front cover, 1, 10).; 714 (9
719 (374); 721 (184); 723 (225, 236);
(7, 8, 9); 872 (7); 873 (17); 874 (4,
876 (7, 8, 9, 10, 11); 877 (3, 4); 878 (2, 3
886; 887; 890; 891; 894; 895-899; 901;

7. *Ideologically slanted news, articles, st*
tures: 646 (6); 660 (3); 663 (3); 664 (
688 (2); 693 (6); 706 (21, 30); 708 (3
713 (15); 721 (190); 722 (676, 682); 72
871 (3); 872 (3, 17); 873 (20); 876 (12)
879 (4, 15); 888; 893;

8. *Politically and ideologically slanted*
(2); 664 (9); 666 (2); 695 (26); 700
cover); 701 (16); 704 (19); 708 (40);
(11).

The "Political Memos from COPE" (Tr. 41
from COPE" (Tr. 470-480) and "COPE Repo
501), all of which are financed by AFL-CIO
derived from dues (R. 147-149), were all
and received by the union appellants her
149, 178). Those leaflets or pamphlets deal
political and ideological matter, and were
COPE's staff, and are published by appell
official journals, among possible other uses.
have not included in the record an unbro
journals for each of the union appellants
to the periods for which the various COI
of record, there are several examples of such

[1] As an examination of these journals will show
in them that would be classified as "news" in a
its place is taken by what might be called news an
pretative stories.

prepared materials in appellants' journals (*cf.* T
and Tr. 652, etc.).

Likewise, there are several examples of use
journals of interpretative news articles written
Jenkins and Michael Marsh, associates on "L
staff (Tr. 533, for example).

Also, the journals are used to urge appellants'
to listen to the nightly broadcasts of Messrs. Va
and Morgan (*e.g.*, Tr. 647, 664 (inside back cover
best way to appraise their broadcasts for politi
ideological content is through the excerpts from
their nightly broadcasts found each week in the "A
News" (Tr. 953-993).

Appellants are employing a psychological and s
cal device which was first named in 1901—"*social*
(Edward A. Ross, *Social Control,* The Macmillan C
—New York—1901). Its most comprehensive expo
in a volume by the same name (Joseph S. Rou
Associates, *Social Control,* D. Van Nostrand C
Inc.—New York—1947), where the following defi
found (p. 3):

> ". . . social control is a collective term f
> processes, planned or unplanned, by which ind
> are taught, persuaded, or compelled to confor
> usages and life values of groups."

Here the individuals involved are the individual a
the group is represented by appellants and their
organizations, and the specific social control pr
termed "political education."

We contend that these periodicals to which in
appellees are forced to subscribe are effective prop
organs which, by such subscription, appellees are
on themselves. Like other media of propaganda, th

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[1] Roucek (*op. cit.*, p. 408) says: "Propaganda is the
effort to control the behavior and relationships of soci
through the use of methods which affect the feelings and
of the individuals who make up the groups."

"hidden persuaders" capable of accomplishing the social control which is the objective of the propagandists—the appellant unions.

A simple but workable statement of their immediate objective, and one which we believe is evident from the record, is that the appellants want their members to vote for the candidates supported by, and espouse the political and economic philosophies advocated by, the labor unions affiliated with the AFL-CIO.[1] How do they accomplish this objective other than by bluntly telling their members to conform?

The types of human behavior may be defined as "automatic" (or habitual); "institutional," or "doubtful." Roucek defines "institutional" behavior as "conduct which requires conscious choice, but where there are clear-cut guides as to what the choice should be" (p. 50) and "doubtful behavior" as "activity in situations where there are no guides in terms of good and bad or right and wrong" (p. 51).

The choice of what political candidates to support or what political and economic doctrines to adopt clearly is a matter lying in the field of "doubtful behavior." Therefore, in the case of such behavior, the first problem confronting the propagandist is to remove it to the institutionally-controlled field, or to that of unthinking habit (*op. cit.*, p. 58). Roucek says:

> "Religious and political leaders, in their exhortations, usually try to transfer decisions from the doubtful field to that of 'good' and 'bad' considerations. Voters who go to the polls to decide between two candidates on the basis of all the knowable facts about them, and all the probable consequences of their election, are unpredictable voters, and politicians like to count their votes in advance. How much less complicated it is both for the voter and the politician if the

[1] Their ultimate aim, of course, would be to control the government so that its agencies can be used to their purposes.

> voter is simply deciding between the fellow who is right and the fellow who is wrong. Undoubtedly most elections are decided on moral issues rather than on the basis of a myriad of complicated facts and probable consequences which enter into them" (p. 59).

The purpose behind the "right" and "wrong" scores in COPE's "voting record" becomes apparent. They make it simple for the voter.

Furthermore, appellants seek to remove the appellees' political decisions even further—into the realm of automatic, or habitual, behavior—*e.g.*, uncritical acceptance of RLPL endorsements. Thus, in the October, 1956 edition of the "Carmen's Journal," the members of that organization were told (Tr. 690, p. 3):

> "Railway Labor's Political League has carefully considered all available information concerning the candidates. Where no endorsements are being made we urge you to carefully consider all information available concerning the public records and attitudes of the candidates and use your best judgment."

While the members are free to use their own judgments as to races where no endorsements are made, is there not an unmistakable, though subtle, suggestion that there is no need to do so as to those races where candidates are endorsed, since RLPL has already thoroughly considered the matter and made a judgment in the employee's best interest which it is only up to him to accept by voting for the endorsed candidate?

We have pointed out above that appellants constantly characterize their legislative programs and candidates as "forward-looking", "progressive", "liberal", "pro-labor", etc. This is an accepted propaganda device, the use of a "glittering generality." This device is defined in *Public Opinion and Propaganda* (Professor Frederick C. Irion, Thomas Y. Crowell Company—New York—1950) as (p. 735):

". . . glittering generality—associating something with a 'virtue word'—is used to make us accept and approve the thing without examining the evidence."

The correlative labeling of the opponents of the candidate supported by appellants as "reactionaries," "anti-labor," and the like fits into another of the categories defined in Professor Irion's book (p. 735):

". . . name calling consists in giving an idea a bad label and is used to make us reject and condemn the idea without examining the evidence."

Professor Irion says (p. 736):

"The distortion and misuse of words, deliberate and accidental, is an exceedingly grave problem for the general public. Any institution or institutions, which will define words accurately and then secure a maximum possible publicity for the accurate definitions, will be doing the people of the United States an invaluable service. For instance, a typical problem arises with the word 'liberal.' Both Democrats and Republicans call themselves liberal.' What is the man-on-the-street to believe? If he could cut through the fog created by the different usages of the word 'liberal', if he were told that the Republicans generally use 'liberal' to mean a person who wants minimum activities by government and that the Democrats generally use 'liberal' to mean a person who wants government to intervene in behalf of the public, some of the dilemmas of the voting public would be solved. If the gobbledegook of business in its advertisements could be translated into meaningful terms, some of the dilemmas of the purchasing public would be solved. And so it would go in all fields. Of course, accurate definitions are not a panacea. But if the individual could obtain accurate definitions with a maximum of ease it would go a long ways toward eliminating some of the evil features of propaganda. As things now stand Mr. and Mrs. Joe Doakes and family have almost no way of determining the meaning of the labels and

> stereotypes used in newspapers and on the air. Mr. and Mrs. Joe Doakes and family are ideal targets for propaganda, the truth or falseness of which has little to do with its acceptance."

The effectiveness of the printed propaganda of the appellants is heightened because they depart from accepted news reporting practices. Roucek points out with respect to standard journalism practices (*op. cit.*, p. 440): "Those who write for the editorial page may express opinions freely, and are expected to do so; but such expression is rigidly forbidden those who write for the general news pages." Consequently the public as readers of periodicals expect that opinion will be found on editorial pages, and are equipped to recognize it as such, but expect that the reporting of news will be relatively objective. That is not so in the literature to which the individual appellees are subjected (Stip., par. 50, R. 189-190). Perhaps the greatest violation of this principle is in the dissemination of the political and ideological views of COPE, as expressed in the "Political Memos from COPE" and "Notes from COPE" and "COPE Reports" (R. 417-501) which are channeled to the editors of the journals of the various appellants and then appear in the form of "canned news" stories.

We believe that it would be an unconstitutional impairment of the freedom of religion for a railroad worker, as a condition of continued employment, to be compelled to buy a recording of a sermon by Billy Graham or to attend a particular church; we believe that it similarly would be unconstitutional to compel him to buy a copy of "Das Kapital" or "Mein Kampf." We believe the compulsory subscription to appellants' periodicals and other literature is just as unconstitutional and subjects the individual appellees to attempts to force their conformity to ideologies and programs to which they are opposed.

In the *Pollak* case, the Court said (343 U. S. at 463):

> "There is no substantial claim that the [streetcar] programs have been used for objectionable propaganda. There is no issue of that kind before us."

Had such issue been before the Court, we have no d
that it would have declared Pollak's rights infringed. T
issue is before this Court in this case. Appellees are
as much a "captive" audience as Pollak and the other ri
of the Washington transit system were.

C. The Union Shop Contract Deprives Individual Appellees Their Constitutionally-Protected Right to Work.

The right of an individual to work for a living in
common occupations of the community is a constitution
protected right. "[T]he right to hold specific private
ployment and to follow a chosen profession free from
reasonable governmental interference comes within
'liberty' and 'property' concepts of the Fifth Amendm
. . ." *Greene* v. *McElroy*, 360 U. S. 474, 492 (1959). T
unions cannot create a dilemma in which the plaintiffs m
relinquish either their beliefs or their jobs, and then ar
that constitutional freedom of choice is preserved beca
the plaintiffs are free as Hobson to choose which con
tutional guarantee to sacrifice.

In *Truax* v. *Raich*, 239 U. S. 33 (1915) this Court sta
(239 U. S. 41):

> "It requires no argument to show that the right
> work for a living in the common occupations of
> community is of the very essence of the personal fr
> dom and opportunity that it was the purpose of
> Amendment to secure."

In *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886), wher
municipal ordinance had discriminated against the right
a Chinese resident to pursue his occupation as laundrym
the Court stated (118 U. S. 370):

> "• • • [T]he fundamental rights to life, liberty, and
> pursuit of happiness, considered as individual p
> sessions, are secured by those maxims of consti
> tional law which are the monuments showing the
> torious progress of the race in securing to men
> blessings of civilization under the reign of just
> equal laws. • • •"

In *Allgeyer* v. *Louisiana*, 165 U. S. 578 (1897), the Court said:

> "... * * * [L]iberty * * * means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

Other cases sustaining the same proposition are:

Cummings v. *Missouri*, 4 Wall. 277, 321-322 (1867);
Ex Parte Garland, 4 Wall. 333 (1867);
Adams v. *Tanner*, 244 U. S. 590 (1917);
Meyer v. *Nebraska*, 262 U. S. 390 (1923);
Takahashi v. *Fish and Game Commission*, 334 U. S. 410 (1948); and
Barsky v. *Board of Regents*, 347 U. S. 442 (1954).

In *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, 238-239 (1957), this Court said:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . . A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law . . . Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding

that he fails to meet these standards, or when action is invidiously discriminatory."

What "rational connection" can be found between t quirement that employees contribute to the unions' po program and their "fitness or capacity" to perform jobs for the Southern Railway System? To reject a ployee on the grounds that his political beliefs are dif from those of the union, and that therefore he canno scientiously contribute to the union's political activit as invidiously discriminatory and irrational as rej him because he is a "Republican or a Negro or a m of a particular church."

In *Smith* v. *Texas*, 233 U. S. 630 (1914), the Cour unconstitutional a Texas statute making it a crime fo to act as a conductor of a railroad train in that state had not served as a conductor or brakeman on a f train for at least two years. In the course of the op the Court stated (233 U. S. 636, 638):

"In so far as a man is deprived of the right to his liberty is restricted, his capacity to earn and acquire property is lessened, and he is denie protection which the law affords those who are mitted to work. Liberty means more than fr from servitude, and the constitutional guaranty assurance that the citizen shall be protected i right to use his powers of mind and body in any ful calling."

* * * * *

"The liberty of contract is, of course, not unlim but there is no reason or authority for the propo that conditions may be imposed by statute whic admit some who are competent and arbitrarily ex others who are equally competent to labor on mutually satisfactory to employer and employee. of the cases sustains the proposition that, unde power to secure the public safety, a privileged can be created and be then given a monopoly right to work in a special or favored position.

> a statute would shut the door, without a hearing, upon many persons and classes of persons who were competent to serve, and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves."

This case clearly recognizes constitutional protection not only against destruction of the right to work, but also against the imposition of unlawful conditions upon that right. Other cases on this point are:

Slochower v. *Board of Education*, 350 U. S. 551 (1956);
Harrison v. *St. Louis & San Francisco R.R.*, 232 U. S. 318, 331 (1914);
Wisconsin v. *Coal Co.*, 241 U. S. 329, 332 (1916);
Frost & Frost Trucking Co. v. *Railroad Commission*, 271 U. S. 583, 592-594 (1926); and
Barron v. *Burnside*, 121 U. S. 186, 200 (1887).

Even in the area of employment by government, this Court has held that "Constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Wieman* v. *Updegraff*, 344 U. S. 183, 192 (1952). Surely nothing could be more arbitrary than exclusion from employment because of refusal to contribute to a political campaign or party.

These cases make it clear that Congress could not constitutionally restrict railroad employment to members of one political party, or require of them an oath to support that party. Nor can it require all non-operating employees of the Southern Railway System to contribute ten dollars a year (or any other sum) directly to the advancement of one selected party or other political agency in order to hold their jobs. A law which does that same thing by indirection likewise is invalid for the same reason. The evidence shows that is the way the union shop agreement under consideration here is applied by appellants. This use of that agreement is an unconstitutional application of the Union Shop Amendment.

D. The Union Shop Contract Deprives the Individual of Property Without Due Process of Law.

The effect of the union shop contract in depr individual appellees of their property without du of law in violation of the Due Process Clause of Amendment is readily apparent from the foregoi sion, and need not be elaborated.

We have demonstrated that it is the federal go which compels the minority employees to contribu unions, and that the moneys thus exacted forcibly minority are employed by the unions to propagate doctrines and support political candidates w minority employees desire to oppose. A more pate priation of property from one group for the bene other could hardly be imagined. As this Court said Mr. Justice Brandeis in *Thompson* v. *Consolid Utilities Corporation*, 300 U. S. 55, 79-80 (1937);

> "Our law reports present no more glaring of the taking of one man's property and giv another. In Missouri Pacific Ry. Co. v. Nebraska, 164 U. S. 403, 17 S. Ct. 130, 41 L. Missouri Pacific Ry. Co. v. Nebraska, 217 U 30 S. Ct. 461, 54 L. Ed. 727, 18 Ann. Cas. 9 Northern Ry. Co. v. Minnesota, 238 U. S. 340, 753, 59 L. Ed. 1337; Great Northern Ry. Co. 253 U. S. 71, 40 S. Ct. 457, 64 L. Ed. 787, 10 1335; Delaware, Lackawanna & Western R. Morristown, 276 U. S. 182, 48 S. Ct. 276, 72 L. and Chicago, St. Paul, Minneapolis & Omaha v. Holmberg, 282 U. S. 162, 51 S. Ct. 56, 75 L. expenditures directed to be made for the be private person were held invalid, although ordered to pay was a common carrier. In Savings & Loan Association v. Topeka, 20 W 22 L. Ed. 455, and Cole v. LaGrange, 113 U S. Ct. 416, 28 L. Ed. 896, the payments ordere benefit of a private person were declared in though the money was to be raised by general In Myles Salt Co., Ltd. v. Board of Comm

239 U. S. 478, 36 S. Ct. 204, 60 L. Ed. 392, the exac
was held unlawful, though imposed under the guis
an assessment for alleged betterments. Comp
Georgia Railway & Electric Co. v. Decatur, 295 U
165, 55 S. Ct. 701, 79 L. Ed. 1365. And this Co
has many times warned that one person's prope
may not be taken for the benefit of another priv
person without a justifying public purpose, even tho
compensation be paid. See Hairston v. Danville
Western Ry. Co., 208 U. S. 598, 605, 28 S. Ct. 331,
L. Ed. 637, 13 Ann. Cas. 1008; Rindge Co. v. Cou
of Los Angeles, 262 U. S. 700, 705, 43 S. Ct. 689,
L. Ed. 1186. Compare Cincinnati v. Vester, 281 U
439, 446, 449, 50 S. Ct. 360, 74 L. Ed. 950."

Here the heinousness of the exaction from individual
ployees for the benefit of the union's political program
compounded by the fact that such program is contrary to
views of the minority employees who are forced to
for it.

As noted above, the unions boldly claim that they h
the right to spend the moneys forcibly extracted from
individual appellees in any way they see fit. Thus, in
brief tendered by the AFL-CIO as "amicus curiae", i
said (pp. 8-9):

> "The right or power of a union to make polit
> expenditures is neither derived from nor regulated
> statute or other governmental authority. * * *
> appellant unions here do not rely on federal law
> thorizing union political activities or expenditures,
> cause there is no such law. They rely only on
> right of a private organization to run its own affa
> in the best interests of its membership, absent
> properly applicable governmental controls."

For reasons developed elsewhere in this brief, it is
answer for the union to say that it is merely a "priv
organization" if its powers derive from government.
whether it is a private agency or a governmental or qu
governmental agency, it seems quite clear that funds

not be taken forcibly from minority empl
political activities of the union, for in eith
is being taken from these individual appel
process of law in violation of the Bill of Ri
is being used to advance the private politic
objectives of the union leadership and o
which the union chooses to support. Cert
mental purpose is served by the exaction
and their expenditure, for the governme
sides in political contests, and the interes
as a whole requires *freedom* of individual
and action, as demonstrated above. More
partisanship were a legitimate function of
taxation of only a part of the citizenry to su
tion could not be justified.

It is argued by the unions that the requi
to union political action is not different fro
bership in a state bar association. It is true
drew an analogy between the union shop an
bership in a bar association, but the analog
in the *Hanson* case where the record conta
of political activity by the unions in contr
rights of individual employees. Here ther
ing evidence that compulsory payment of du
to violate the constitutional rights of th
ployees. If it should ever develop that st
tions engage in widespread political activ
tion to the interests of their minority memb
fident that this Court will again rise to pro
rights of the minority.

The brief tendered by the AFL-CIO m
labor political parties, such as the "Caucus
the "Workingmen's Labor Party of Phila
p. 16), the New York "Workingmen's Party
the "New England Association of Farmers,
Other Workmen" (brief, p. 17) and the "G
Party" (brief, p. 18). Could the federal g
forced contributions to those political part

nployees to finance
ither case property
pellees without due
Rights. The money
itical ambitions and
of the candidates
ertainly no govern-
ion of such moneys
nment cannot take
erest of the Nation
al political thought
oreover, if political
of government, the
support that func-

quired contribution
rom enforced mem-
true that this Court
and required mem-
logy was mentioned
nta[illegible]ed *no evidence*
ntravention of the
here is overwhelm-
f dues is being used
the minority em-
state bar associa-
ctivities in opposi-
mbers, we are con-
rotect the political

mentions several
eus" (brief, p. 15),
iladelphia" (brief,
rty" (brief, p. 16),
rs, Mechanics and
"Greenback-Labor
government have
arties as the price

of working in the railroad industry? Can it c
tribution to be used for the same purposes by a
constantly working in cooperation with an
political party (AFL-CIO brief, p. 25)?

The AFL-CIO further says (brief, p. 28) th
unions have been compelled to enter politics to
political programs of such organizations as t
Association of Manufacturers and the Ameri
Association. Of course, as long as labor union
tary organizations they have the same right to
in politics. But when they use the authority of
government to compel unwilling individuals to j
dues, they have an entirely different status. D
AFL-CIO would be among the first to object if t
the federal government were used to compel a
turers and doctors to join their respective asso
contribute to political programs which the la
abhor.

III.

**Appellants were not denied due process by
below.**

Partly in their brief (pp. 65-79, 87-100) and
Appendix to their brief, appellants have rai
objections to the procedures followed in the c
For the most part such objections relate to ro
dures of the type normally followed by any co
objections of the appellants are plainly without
the appellants have relegated much of the di
such matters to an appendix, and since the matt
clearly do not suggest constitutional or other
problems with which this Court need be burde
placing our detailed analysis of such procedura
in the Appendix to this brief.

The principal procedural objection of the
challenges the propriety of the class action.
appear to be a matter exclusively for the discr

Georgia courts, at least as long as cons
of the appellants are not invaded. Moreov
tional or other objections of the appellant
by their stipulation (R. 166-167):

> "The plaintiffs and intervening plain
> adequately represent for the purpose
> tion the interests of the employees
> ployees of the railroad defendants spe
> preceding paragraphs, . . . these bein
> ployees or former employees of the
> dants affected by and opposed to the u
> ment who also are opposed to the use
> dues, fees and assessments which they
> and will be required to pay to support
> political doctrines and candidates and
> grams set forth in this Stipulation of

The "employees and former employees
the two preceding paragraphs" are those
were compelled "to become members of the
union organizations" or were discharged
refusal to become "members of the *labor u*
(italics added).

Thus, the appellants have stipulated th
plaintiffs is appropriate and is fairly and
resented, and that the class consists of e
sented by all of the "defendant labor union
Appellants cannot properly contest these
this Court in the face of their stipulation.

CONCLUSION

On the basis of the foregoing consideration
that the union shop contract represents an unc
exercise of governmental power to force the i
pellees to submit to political and ideological re
by, and association with, those whose views a
to them; and thus deprives the individual appe
constitutionally-protected (1) political freedo
dom of association, (2) freedom of speech an
(3) right to work; and also unconstitutiona
them of their property without due process of
fore, the decision of the Georgia Supreme C
case should be affirmed.

Respectfully submitted,

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March 16, 1960

APPENDIX

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APPENDIX

I.

Statement of the case.

A. The Union Shop Agreement.

On February 27 and April 1, 1953, the railroad company appellees,[1] collectively constituting the Southern Railway System (R. 165-166), entered into agreements with the labor union appellants[2] establishing a union shop with respect to the so-called non-operating employees of the Southern for whom said appellants were the statutory collective bargaining representatives. The two agreements are identical in substance. The April 1, 1953 agreement covers only one of the smaller railroad company appellees, the Carolina and Northwestern Railway, having employees represented by only four of the union appellants; the February 27, 1953

---

[1] The Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Harriman and Northeastern Railroad Company, The Alabama Great Southern Railroad Company (including Woodstock and Blocton Railway Company), New Orleans and Northeastern Railroad Company, The New Orleans Terminal Company, Georgia Southern and Florida Railway Company, St. Johns River Terminal Company, and the Carolina and Northwestern Railway Company.

[2] International Association of Machinists (the "I.A.M."), International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Sheet Metal Workers International Association, International Brotherhood of Electrical Workers (the "IBEW"), Brotherhood Railway Carmen of America, International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the "BRC"), Brotherhood of Maintenance of Way Employees, The Order of Railroad Telegraphers (the "ORT"), Brotherhood of Railroad Signalmen of America, National Organization Masters, Mates and Pilots, National Marine Engineers Beneficial Association (the "Marine Engineers"), American Train Dispatchers Association (the "Train Dispatchers"), and Railroad Yardmasters of America.

agreement covers all other railroad company appell
all labor union appellants. The two agreements wi
inafter be referred to collectively as "the union sho
ment," or "the union shop contract."

The union shop agreement became effective on A
1953 (R. 214), contains no termination date (R. 19
is still in effect. It provides, in part (R. 205-206, 20

> "... all employes of the Carrier now or he
> subject to the rules and working conditions agre
> between the parties hereto, except as hereinaft
> vided, shall, as a condition of their continued e
> ment subject to such agreements, become mem
> the organization party to this agreement repre
> their craft or class within sixty (60) calenda
> after they first perform compensated service
> employes after the effective date of this agr
> and thereafter shall maintain membership in s
> ganization ..."
>
> • • • • •
>
> "Nothing in this agreement shall require an e
> to become or to remain a member of the organiz
> such membership is not available to such employe
> the same terms and conditions as are generally
> cable to any other member, or if the membership
> employe is denied or terminated for any reaso
> than the failure of the employe to tender the p
> dues, initiation fees, and assessments (not in
> fines and penalties) uniformly required as a co
> of acquiring or retaining membership. For pu
> of this agreement, dues, fees, and assessments
> be deemed to be 'uniformly required' if they
> quired of all employees in the same status at th
> time in the same organizational unit."

The complete union shop agreement will be found
205-217.

B. The Proceedings Below.

S. B. Street, employed by the New Orleans and
eastern Railroad Company as General Clerk, an

other non-operating employees of the railroad compa
appellees, brought this action in the Superior Court of Bi
County, Georgia, on June 5, 1953—nine days before t
deadline for acquiring membership under the union sh
agreement—against appellants and the railroad appelle
seeking (R. 13-14): (1) an injunction against the enforc
ment of the union shop agreement; and (2) a declarati
that the union shop agreement is illegal, void and unco
stitutional. An order was that day granted by the cou
restraining appellants and the railroad appellees "fro
discharging any employee for the sole reason that su
employee does not have or maintain membership in any
the organizations named as defendants in this petitio
(Tr. 33).

On June 12, 1953, Miss Nancy M. Looper, Miss Hazel
Cobb, Mrs. Elizabeth Ferguson, Mrs. Edna G. Fritsch
J. H. Davis, and twelve others filed a petition for leave
intervene in the above proceeding (R. 14-16), which pe
tion was that day granted and petitioners made parti
plaintiff (R. 17).

The labor union appellants (but not the individual a
pellants) filed a petition for removal of the action to t
United States Court for the Middle District of Georgia
June 25, 1953 (R. 31-38); motions to remand were filed
the railroad appellees (R. 47-51), the original petitione
(R. 51-54), and by the intervenors (R. 55-57). Three and
half years later, on January 7, 1957, the District Cou
entered an order, consented to by counsel for union app
lants, remanding the case to the Superior Court of Bi
County, Georgia (R. 57-58).

Prior to that date, the petition had been twice amend
(R. 17-20, 21-31), and the railroad company appellees h
(on June 29, 1953) filed their answer in the state cou
(R. 39-47).

Following remand, the labor union appellants, on Jan
ary 10, 1957, filed a motion to dismiss the petition for failu
to state a cause of action (R. 219). Hearing before Jud
Oscar L. Long, of the Superior Court of Bibb County, w

held on January 29, 1957, on which date the third
ment to the petition was tendered, allowed and
filed (R. 58-60, 219). Treating the appellant unions
to dismiss as directed to the complaint as so a
Judge Long sustained their motion, dismissed the
(R. 221) and dissolved the restraining order. Th
of dismissal was appealed to the Supreme Court of
and supersedeas was allowed as to the appellant em
filing a supersedeas bond (R. 60-61). That court
10, 1957, reversed Judge Long. *Looper et al.* v.
Southern and Florida Railway, 213 Ga. 279, 99 S. E.
The remittitur of the Supreme Court of Georgia
ceived by Bibb Superior Court on July 18, 1957 a
the judgment of that court on July 22, 1957 (R. 2
the latter date, the appellants for the first time
an answer to the petition (the law requires the filin
answer within thirty days from date of service—
Code Section 81-201) accompanied by a special mo
questing its allowance, and the court, on that date,
and ordered the answer filed, subject to objection
parties, who were required to show cause on August
why said motion should not be granted (Tr. 12
plaintiffs in the trial court (including, of course,
vidual appellees here) objected to the allowance
tardy answer, and on February 18, 1958, Judge Lon
that he would sustain the objections but such an or
never signed (R. 221).

During the first half of 1958, counsel for the p
in the trial court took the depositions of numerous
of local lodges of the labor union appellants (R. 1
scheduled the depositions of numerous national of
those appellants, and of organizations related to t
157-161); and served comprehensive requests for
sions upon the appellants (R. 314). At a pre-trial
ence on May 8, 1958, a comprehensive order for pr
of Books and Records was signed by Judge Long (R
On May 22, 1958, the appellants filed a Plea of *Res*

(R. 67) and, on May 30, 1958, filed a petition for an o
suspending the court's order requiring the productio
books and records and for suspension of the taking of t
mony by plaintiffs on the merits until the Plea of
Judicata could be inquired into (R. 66-69), the peti
being denied that day (R. 69-70).

On August 14, 1958, a comprehensive stipulation
entered into by all parties (R. 152-217).

A further pre-trial conference was held before Ju
Long on September 23, 1958, at which time: (1) the stip
tion referred to above was presented to the court, w
accepted the stipulation, approved the procedures the
contained for the introduction of additional evide
agreed, as requested by all parties, to try the case with
a jury, and scheduled trial for the week beginning Nov
ber 10, 1958; (2) the appellants requested permissio
withdraw their plea of *Res Judicata*, which withdrawal
approved by the court; (3) the individual appellees
quested, and were granted, permission to withdraw t
objections to the allowance of the appellants' answer;
(4) individual appellees tendered and served the fo
amendment to the petition, which was allowed and ord
filed, subject to objections and demurrers (R. 98-101).
pellants filed objections to certain portions of the fo
amendment to the petition (R. 85-89), which objections w
overruled on the first day of trial (R. 89), and filed an
swer to that amendment (R. 89-97).

As finally amended, the petition, in addition to the
junctive and declaratory relief mentioned above,
sought a return of dues, fees and assessments paid by
individual appellees and the class they represent to
union appellants under the compulsion of the union s
agreement (R. 83-84), the restraining order having b
dissolved as set forth above. The individual appellees h
some of whom were intervening plaintiffs originally, w
all named as petitioners (R. 71).

The case was tried before Judge Long November 10
and November 20-21, 1958, without a jury, the first f

days being devoted to the introduction of e
ter two to argument.

On December 8, 1958, Judge Long signed
Conclusions, Order, Judgment and Decree
which is before this Court. The case was
appellants to the Supreme Court of Georgia
the judgment of the trial court. *Internatio*
of Machinists et al. v. *Street et al.*, 215 Ga
2d 796 (1959). That decision of the Georgia
is before this Court for review (R. 249-270).

C. The Evidentiary Record.

The evidentiary record in this case consi

(1) The Stipulation of Facts (R. 165-217

(2) The testimony of A. E. Lyon, Execu
Treasurer of the Railway Labor Executiv
(sometimes referred to herein as "RLEA"

(3) The testimony of Cyrus T. Anders
Treasurer of Railway Labor's Political
times referred to herein as "RLPL"), an
the Chairman of RLEA (R. 110-114);

(4) The testimony of John T. O'Brien,
the Non-Partisan Political League of the I
times herein referred to as the "MNPL")

(5) The testimony of Harold Jack, Com
American Federation of Labor and Congres
Organizations (the "AFL-CIO") (R. 121-1

(6) The testimony of Andrew J. Biemill
the Department of Legislation of the AFL
131);

(7) The testimony of James L. McDevi
the Committee on Political Education of
(sometimes herein referred to as "COPE"

f evidence, the lat-

ned the "Findings,
eree" (R. 101-107)
as then carried by
gia, which affirmed
tional Association
Ga. 27, 108 S. E.
gia Supreme Court
0).

onsists of:

-217);

xecutive Secretary-
utives' Association
A") (R. 108-109);

derson, Secretary-
al League (some-
and Assistant to

en, Coordinator of
ne I. A. M. (some-
") (R. 115-121);

Comptroller of the
gress of Industrial
21-125);

miller, Director of
AFL-CIO (R. 125-

evitt, Director of
of the AFL-CIO
E") (R. 131-152);

(8) Plaintiffs' First and Substituted Second
Admissions and the union appellants' respo
(R. 277-323);

(All of the above is included in the printed T
Record; what follows is evidence in the origin
but has not been printed for the reason given
note on page 1 of this brief.)

(9) Plaintiffs' Substituted Third Request
sions and the union appellants' response there
1075);

(10) 588 other documentary exhibits introdu
appellants and individual appellees (Tr. 37
tually all of these exhibits are documents publ
appellant unions and their affiliates concerni
was stipulated (R. 198):

> "The documents listed below are officia
> of the labor union defendants or other orga
> indicated below, and such documents we
> by the organizations indicated in the re
> of business, the cost of publication and
> was paid for out of the general dues fun
> ganization listed, and copies thereof ha
> are kept and maintained by said organiza
> regular course of their business."

(11) Additional items read into the record b
consent (Tr. 242-286).

D. The Evidence.

1. *The Parties.*

The railroad appellees operate lines of
Georgia, Florida, North and South Carolin
Tennessee, Kentucky, Ohio, Indiana, Illinoi
Alabama, Mississippi, Louisiana and the Distri
bia; each is a carrier by railroad subject to th
Commerce Act (24 Stat. 379, 49 U. S. C. 1

is a "carrier" as defined in the Railway
Stat. 577, 49 U. S. C. 151 *et seq.*) (R. 198)

The union appellants are the collective b
sentatives for all the various crafts or
operating employees on the Southern (R.
the only such representatives (R. 198).

The class represented by the individual a
of "all those employees or former employee
defendants affected by and opposed to
agreement who are also opposed to the us
dues, fees and assessments which they ha
will be required to pay to support ideologi
doctrines and candidates and legislative p
for other purposes other than [collecti
(R. 167). Each was notified by the unio
the railroad employers that he must beco
the union appellant representing his craf
dismissed from employment (R. 167).

It is stipulated (R. 188):

> "The plaintiffs, intervening plaintif
> they represent have been and are opp
> of their money by the labor union d
> way Labor Executives' Association,
> Political League, Machinists Non-Pa
> League, the American Federation of
> gress of Industrial Organizations, an
> on Political Education of the AFL-CIO
> been, are and will be required to pay i
> assessments for the endorsement and
> legislation, ideologies and political do
> didates for public office which have be
> be supported and endorsed by the la
> dants, Railway Labor Executives' A
> way Labor's Political League, Machini
> Political League, the American Fede
> and Congress of Industrial Organizati
> mittee on Political Education of the
> out in this Stipulation of Facts, or fo
> other than the negotiation, maintenan

tration of agreements concerning rates of
and working conditions, or wages, hours,
other conditions of employment, or the
disputes relating to the above."

**2. *The Mechanism by Which Dues, Fees and Asse
Paid by the Individual Appellees Are Channel
Political and Economic Uses.***

Appellee J. H. Davis was required as a condi
tinued employment, against his wishes and over
in March, 1957 (following the dissolution of the
restraining order) to join the Brotherhood of R
Steamship Clerks, Freight Handlers, Express
Employees and to pay a reinstatement fee and
in the amount of $96.00, and dues of $2.25 per
March, 1957 through June, 1958, and $3.00 per
June, 1958 (R. 203).

Appellee Hazel E. Cobb was required to join
in April, 1957 and pay an initiation fee and bac
also to continue paying dues at the rates set
(R. 203-204).

Appellee S. B. Street was required to join the
in April, 1957, and pay to it a reinstateme
back dues, and to continue paying dues at th
forth above (R. 204).

Absent the supersedeas order and bond referr
similar payments would have been required o
named appellees (R. 202-203, 205). The ini
reinstatement fees and dues required by othe
unions of their members, including individua
are set out at R. 171-175.

Such dues, fees and assessments generally a
tially to a local lodge of the union appellant
Tr. 910-916).

The local lodge generally retains a portion of
and transmits the remainder to the national (int
lodge or perhaps some to a district or systen
177; Tr. 910-916).

Each of the appellant unions is an affiliate of the AFL-CIO, a national federation of labor organizations, and pays to it a per capita tax amounting to 5¢ per member per month, such payments being made from the appellants' general funds, derived and maintained from periodic dues, fees and assessments paid by appellants' members (R. 177, 178, 317-318, 322). A part of the moneys so paid to the AFL-CIO is used to support the activities of the AFL-CIO Committee on Political Education and the AFL-CIO Department of Legislation (R. 126, 135-152, 319, 323).

All of the appellants, through their chief executive officers, are members of the Railway Labor Executives' Association, an unincorporated association and labor organization whose chief activity is in the field of federal legislation (R. 179). RLEA is financed by assessments upon appellants (and other unions affiliated therewith) paid from appellants' general dues funds derived and maintained from periodic dues, fees, and assessments paid by their members (R. 177, 180-181).

Railway Labor's Political League is an organization also composed of appellants' chief executive officers (and the chief executive officers of certain other labor organizations), they being automatically entitled to membership in that organization by virtue of their official positions with appellants (R. 182). RLPL is substantially supported by contributions from RLEA which, as noted above, gets its financial support from appellants' general dues funds (R. 183-184).

The Machinists' Non-Partisan Political League is an organization under the complete control of officials of the International Association of Machinists and is largely supported by direct grants from that appellant (R. 193-195).

"LABOR" is a weekly newspaper published by Railway Labor's Cooperative and Educational Publishing Society, of which all appellants (except the Masters, Mates and Pilots and the Marine Engineers) are part owners, and is supported principally by subscriptions which the general funds of all appellants (except the Train Dispatchers) are used to purchase (R. 189).

Railway Labor's Political League, the Machinists' Non-Partisan Political League and the AFL-CIO Committee on Political Education all make direct financial contributions to candidates for public office (R. 151, 182, 186-187, 196-197, 277-316). However, they contend that any such contributions to candidates for Federal office are from funds "voluntarily" contributed by individual members of appellants, not from moneys received by appellants from their members as dues, fees or assessments. They admit that they use dues moneys to pay for their general overhead and "political education" activities (as well as for actual contributions to state and local candidates) so that virtually the entirety of so-called "voluntary" contributions may be channeled to federal candidates supported (R. 135-150, 182-183, 184-186, 193, 194-195). Thus the "overhead" is as effectively used for political purposes as the "voluntary" fund.

Although there is some variation among the appellants in the precise routing of an employee's dues into political and ideological activities, such variations are of no particular significance here. In *every* instance money paid by the individual appellees is being used for political and ideological purposes by each appellant itself and by RLPL, MNPL, COPE, "LABOR," RLEA and the AFL-CIO Department of Legislation.

3. *The Evidence of Record Shows That the Labor Union Appellants Use Money Exacted From the Individual Appellees Under the Union Shop Agreement for Political and Ideological Purposes.*

Railway Labor's Political League.

The operation of RLPL is described in the stipulation as follows (R. 182-183):

> "Railway Labor's Political League was formed for the specific purpose of engaging in political activities dealing with the election of candidates to public office. The organization maintains two funds—one the so-called 'educational' fund and the other the so-called

'free' fund. Railway Labor's Political League re ceived, receives and will receive direct grants into it 'educational' fund from the general funds of the unio defendants and from the Railway Labor Executive Association. The monies in the 'educational' fund ar used, except in Wisconsin, New Hampshire, Pennsyl vania, Indiana, Texas and Iowa, to support candidate for public office at the State and local level; for pub licity to support candidates on the national as well a the State and local level; for administrative expense to operate Railway Labor's Political League generall (including the salaries of the paid employees of tha organization, office expense, supplies, etc.) and fo miscellaneous activities in supporting candidate (whom plaintiffs, intervening plaintiffs, and the clas they represent oppose) at the national, State or loca level, such as transportation of voters to and from th polls, preparation and distribution of voting record preparation and distribution of sample ballots, and th preparation and distribution of various types of poli ical literature soliciting or influencing support fo candidates for political office on the national, Stat and local levels.

"The administration, operation and maintenance o the 'free' fund activities of Railway Labor's Politica League has been, is and will be financed and supporte by direct expenditures from the 'educational' fund o Railway Labor's Political League derived from th general dues funds of the labor union defendants."

RLPL's "free" fund is used for direct contributions to th campaigns of Presidential, Vice Presidential, Congressiona and U. S. Senatorial candidates (R. 184). Such expend tures for the two election years 1954 and 1956 are set ou in the First Request for Admissions (paragraph (c)) an the appellants unions' response thereto, and the Substitute Third Request for Admissions (paragraph 1) and the ap pellant unions' response thereto (R. 306-314, 316; Tr. 105 1056, 1073). Those contributions by Railway Labor's Poli ical League during the 1954 and 1956 national political cam paigns may be summarized as follows (R. 186-187):

In 1956, RLPL contributed substantial financial support to the national committee of one major national political party, and not to the other.

In 1954, RLPL contributed substantial financial support to the national committee of the same major national political party, and not the other.

In 1956, RLPL contributed substantial financial support to eight U. S. Senatorial candidates of the same major political party and to no U. S. Senatorial candidates from the other major political party.

In 1954, RLPL contributed substantial financial support to thirteen U. S. Senatorial candidates of the same major political party and to no U. S. Senatorial candidates of the other major political party.

In 1956, RLPL contributed substantial financial support to sixty-four Congressional candidates of the same major political party and to four Congressional candidates of the other major political party.

In 1954, RLPL contributed substantial financial support to fifty-six Congressional candidates of the same major political party and to six Congressional candidates of the other major political party.

In 1956, RLPL contributed substantial financial support to three gubernatorial candidates of the same major political party and to no gubernatorial candidates of the other major political party.

In 1954, RLPL contributed substantial financial support to two gubernatorial candidates of the same major political party and to no gubernatorial candidates of the other major political party.

Theoretically, contributions to the "free" fund of Railway Labor's Political League are the voluntary acts of individual members of the labor union appellants. However, collections to that "free" fund actually are made by officers or shop stewards of the appellant unions and transmitted to RLPL through persons who, although designated as "deputy treasurers" of RLPL, in fact are the chief financial officers of the labor unions or, in two instances, are editors

of their periodicals (R. 184-186). Most appellant unio donate space in their periodicals for the purpose of induci their members to contribute to RLPL's free fund, and t efforts of a substantial number of their executive perso nel at the national and local levels also are spent in urgi contributions to the free fund of RLPL (R. 185).

The evidence shows that the "endorsement" of candidat by the Railway Labor's Political League is not a matter the choice of that candidate by the ordinary members the various unions "affiliated" with, and supporting fina cially, RLPL. On the contrary that organization has on 22 members (R. 182). Its endorsement procedure has be described as follows (Tr. 934, p. R-152):

> "The voting records and attitudes on public issues all the members of the House and Senate are ca fully scrutinized by the Advisory Committee to t Railway Labor's Political League. This Committee composed of the National Legislative Representativ of the railway labor organizations who are located Washington, D. C. This Advisory Committee to t League meets on a great many occasions befo primaries and general elections to make recommend tions to the League of candidates whose records a such that they can be endorsed. The members of t League, who are the chief executives of the standa railroad labor organizations [the 22 men mention above] are then in a position to endorse the candidat whose records show that they have acted in the intere of the people."

The individual appellees, and the class they represent, a given no opportunity to participate in the determination the political programs and activities of RLPL; their vie thereon have not been sought; they have not ratified, or quiesced in, such activities and programs (R. 198). B

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[1] The International Association of Machinists, of course, "plu the MNPL; the other two exceptions are the Masters, Mates a Pilots, and the Marine Engineers (R. 185).

when an RLPL endorsement is publicized, it does not mention that it is an endorsement by only 22 men at the most. It says (See Tr. 567, p. 1, Columns 6 and 8, for example—this is the 1956 special edition of "LABOR" supporting Mayor Joseph Clark for U. S. Senator from Pennsylvania):

"The senatorial candidate for whom this special edition has been issued is supported not only by Railway Labor's Political League, *speaking for nearly all rail unions . . .*"

* * * * * *

"The Standard Railroad Labor Organizations have endorsed . . . They do not make such endorsements lightly."

* * * * *

"*A. E. Lyon . . . chairman of Railway Labor's Political League, which speaks for 21 rail unions having 1,500,000 members, . . .*"

* * * * * * *

"Turn out at the polls on November 6, Pennsylvania voters, *Railworkers' Spokesman Lyon pleads*" (italics added).

In the New York special edition of "LABOR" in 1956 supporting Mayor Wagner, it is stated (Tr. 568, p. 2, col. 3):

"Just as important as the election of Bob Wagner to the Senate is the caliber of men who'll represent New York in the U. S. House. Fortunately, in many districts able, conscientious fighters for the people are presenting themselves in the House races this year.

"These are the men endorsed by Standard Railroad Labor Organizations, through Railway Labor's Political League" (italics added).

The Machinists' Non-Partisan Political League.

The Machinists' Non-Partisan Political League, the political organ of the International Association of Machinists, was formed by that union for the specific purpose of engaging in "political and educational" activities dealing with

the election of candidates to public office (R. 192). It tivities are under the direction and control of officers employees of IAM (R. 193).

MNPL employs an expert political consultant and him a retainer fee of $12,000 a year plus expenses, which, plus the salaries of the consultant's secretari paid out of the general funds of the IAM (R. 193).

The general dues funds of IAM are contributed t so-called "educational" fund of MNPL in substa amounts, and that fund receives contributions also local and district lodges of IAM (R. 195). Contribu into the so-called "educational" fund of MNPL have made as follows (R. 195):

Source of Contribution	July–Dec. 1953	1954	1955	1956	1957
International Headquarters, IAM	$5,000[1]	$10,000	$10,000	$10,000	$10,000
District and Local Lodges, IAM	$ 102[1]	$33,976	$27,496	$44,019	$41,112

[1] Yearly totals divided by two.

Each of the above contributions was made from ge dues funds (R. 195).

Collections for the "general" fund of MNPL, from v direct contributions to the campaigns of presidential, presidential, congressional and senatorial candidates made, are by officers of MNPL who frequently are officers of IAM (R. 195).

The administration, operation and maintenance o "general" fund activities of MNPL are financed and ported by direct expenditures from the "educational" of MNPL derived from the dues paid by individual app and other union members (R. 192-193).

The "educational" fund of MNPL is also used for tributions to, and otherwise to support, candidates for lic office at the state and local level except where prohi

by state law; for publicity to support candidates on national as well as the state and local level; for admi trative expenses to operate MNPL generally (including salaries of the paid employees of that organization, of expense, supplies, etc.); and for activities in support candidates, such as the preparation and distribution voting records, and the preparation and distribution various types of political literature directed toward soli ing and influencing support for candidates for politi office on the national, state and local levels (R. 192).

In 1954, MNPL contributed substantial financial supp to the national committee of one major political party, a not the other (R. 196).

In 1956 MNPL contributed substantial financial supp to the national committee of the same major political par and not to the other (R. 196);

In 1954, MNPL contributed substantial financial supp to seventeen U. S. Senatorial candidates of the same pol cal party and to none of the candidates of the other ma political party (R. 196);

In 1956 MNPL contributed substantial financial supp to fifteen U. S. Senatorial candidates of the same ma political party and to none of the candidates of the ot major political party (R. 196);

In 1954 MNPL contributed substantial financial supp to forty-one Congressional candidates of the same ma political party and to none of the Congressional candida of the other major political party (R. 197);

In 1956 MNPL contributed substantial financial supp to seventy-eight Congressional candidates of the sa major political party and to none of the Congressional c didates of the other major political party (R. 197);

In 1954 MNPL contributed substantial financial supp to two gubernatorial candidates of the same major politi party and to none of the gubernatorial candidates of other major political party (R. 197);

In 1956 MNPL contributed substantial financial supp to three gubernatorial candidates of the same major pol

cal party and to none of the gubernatorial candidat
other major political party (R. 197).

The major political party receiving the financial
in each instance set forth above was the same (R.

The AFL-CIO Committee on Political Education.

The Committee on Political Education is the
arm of the AFL-CIO (R. 151). It is a headquart
mittee of the AFL-CIO and an integral part of tha
zation (R. 122). Mr. James L. McDevitt is its Dire
132).

The activities of COPE are supported in three
135-137): (1) by so-called "voluntary" individua
butions to COPE's Individual Contributions Fund
referred to as "ICF"), (2) by contributions fr
union organizations affiliated with the AFL-CIO t
known as COPE's "Educational Fund", and (3)
direct assumption of COPE's obligations by the A
itself.[1]

The AFL-CIO assumed the expenses of COPE f
cember 5, 1955 through June 30, 1958, the most re
for which information is of record, as follows (R. 1

Expense Item	Dec. 5, 1955–June 30, 1956	July 1, 1956–June 30, 1957	Ju–Ju
Salaries	$207,682.65	$201,162.85	$3
Travel Expenses	73,614.36	64,388.74	1
Printing	41,283.21	54,407.16	
Postage	6,650.01	19,286.47	
Supplies	2,207.69	2,424.46	
Subscriptions	2,080.78	2,076.10	
Rent	4,170.18		
Field Offices	3,783.71	6,683.62	
Matching Funds			
Other Expenses	10 899.59	15,292.64	
TOTALS	$352,372.18	$365,722.04	$5

[1] The AFL-CIO Executive Counsil states that the "
functions of the COPE are carried out on a year-round
are paid for by per-capita and/or treasury funds" (T

COPE has received direct contributions into its edu tional fund from labor unions affiliated with the AFL-C as follows (R. 137):

February 1, 1956-June 30, 1956	$ 86,763.41
July 1, 1956-June 30, 1957	263,305.75
July 1, 1957-June 30, 1958	320,907.46

During the period December 5, 1955 through June 1956, receipts into COPE's ICF were $80,314.67; for t period July 1, 1956 through June 30, 1957, such receip were $542,259.79; from July 1, 1957 through June 30, 19 receipts by the ICF were $346,825.50 (R. 141).

The Executive Council of the AFL-CIO (of which sever of the chief executives of the labor union appellants a members (R. 132; Tr. 393, p. ii)) gives the following a count of COPE and its activities:

"Th Committee on Political Education was form on December 5, 1955 through the merger of Labo League for Political Education, the political arm the former AFL, and the Political Action Committ of the former CIO. It began operations under t co-directorship of James L. McDevitt, former LLP director, and Jack Kroll, former PAC director" (T 393, p. 311).

* * * * *

"In 1956 more than 30,360,000 pieces of literatu were printed and distributed, including a 256 pa basic handbook on political organization [Plaintif Exhibit 15 "How to Win"; Tr. 416], and a speake handbook consisting of 374 pages [Plaintiffs' Exhi 101; Tr. 502]. A semi-monthly newsletter, which is no on a subscription basis, was instituted. During t campaign period other materials were produced t gether with a special publication directed to the atte tion of minority groups.

"A voting record by states, recording over 20,6 votes cast by members of Congress from 1947 throu 1956, was published and 10,210,525 of these individu voting records [Plaintiffs' Exhibits 13 and 14; Tr. 41

415] were distributed through the s
and industrial union councils" (Tr. 3

• • • • •

"Endorsement of Stevenson, Kefauver.

"Acting upon this report [by COPI
recommendations of the AFL-CIO E
the General Board of the AFL-CIO o
1956, in Chicago, Illinois, endorsed th
Adlai Stevenson and Estes Kefauver f
Vice President of the United States.

"In order to implement this end
Committee on Political Education sta
mediately to integrate the presidentia
the senatorial, congressional and sta
which it was already involved" (Tr.

• • • • •

"COPE in the 1956 Election.

"Your COPE prepared and distribute
a detailed comparison of the Republi
cratic platforms . . . It assisted the e
didates in arranging meetings with
of our organizations. It prepared and
erature for our members outlining in
the records of the presidential and v
candidates. It assisted the committees
candidates in the preparation and dist
paign literature and it worked closely
Advisory Committee of the endorsed c
393, p. 108).

COPE's direct contributions from ICF
eral candidates during the campaigns of 19
at R. 277-299, 315.

During the 1956 presidential campaign,
eral board of the AFL-CIO endorsed the
vice presidential candidates of one of the
parties, and the COPE organization act
those candidates, financial contributions in

$56,500.00 were made to the campaigns of t
dates out of COPE's ICF (R. 143). Many e
COPE worked actively on behalf of those can
attempted to secure as large a vote for those
as possible among the members of the labor u
ated with the AFL-CIO and their families, f
neighbors (R. 143).

In 1956 COPE contributed financial support
U. S. Senatorial candidates of the same majo
party and made no such contribution to any sen
didates of the other party; in 1956 COPE
financial support to one hundred twenty-five
for Congress of the same major political pa
only two candidates for Congress of the oth
party; in 1956 COPE contributed financial
seven gubernatorial candidates of the same maj
party and gave no financial support of any s
gubernatorial candidate of the other major poli
(R. 151).

The foregoing contributions were made pre
in favor of the candidates of one major polit
including the presidential and vice presidential
of that major political party (R. 197, 278-299).
shows that the class represented by the indivi
lees includes members of both political parti
The great preponderance of the contributions a
by the other political organizations of the l
appellants, and of their various publications, in
newspaper "LABOR," has been in favor of the
of the same major political party to which COP
bulk of its support (R. 197).

The Committee on Political Education oc
thirds of the sixth floor of the AFL-CIO buildin
but pays no rent on its quarters even duri
periods (R. 142). It enjoys a "free ride" on
at the expense of the unions who are financed
compulsory dues, fees and assessments paid
members.

COPE's voting records (Tr. 414, 415) clea
political documents. They were paid for
"educational fund" (R. 144). Examinatio
ing records will show that the "score" ma
gressman depended upon whether he sid
on proposed legislation. Over ten millio
individual state voting records were distr
members (R. 144-145).

The booklet "How to Win" (Tr. 416) is
manual on practical politics for the edu
union officials and was published and d
general funds of the AFL-CIO and the "ed
of COPE (146-147).

The record contains a series of "Politica
COPE" (Tr. 417-469) which were publish
uted with AFL-CIO funds, 84,000 copies
being distributed to the unions affiliated
CIO (R. 147-148).

This Court is urgently requested to exam
copies of these Political Memos. They are
political propaganda and even vituperatio

For example, they refer to the candidat
COPE as "forward-looking candidates" (T
who "upholds labor's right" (Tr. 432); as
the help of thousands of trade unionists'
one who will be a "fine addition to the U.
446), or who "brings a fresh liberalism with

A candidate not endorsed by COPE, o
ure of whose views COPE disapproves, on
"flies backwards" (Tr. 418); uses a "huc
line" (Tr. 418); or is trying to "throw san
the people" (Tr. 419); "has a harder t
truth than any politician in the country"
"member of . . . Republican machine" (Tr
that "anything that helps take money fr
of the taxpayer and put it into the pocke
dustry is okay" (Tr. 433); belongs to the
sumer . . . bloc" (Tr. 434); "spout[s] el

states' rights" (Tr. 438); is one of the "enemie
(Tr. 439); "takes pride in opposing appropr
foreign aid" (Tr. 445); and "would love to put t
in leg irons" (Tr. 464). As has been pointed ou
rial in these Political Memos is reproduced by
lants in their official journals for disseminati
members.

"COPE Reports" (Tr. 481-501) are simply
leases prepared by COPE for distribution to
and other affiliates of the AFL-CIO, and their
and distribution is financed by dues paid by
appellees and other union members (R. 148-14

COPE's overall objectives are apparent from t
Report" for January 1957 (Tr. 481, pp. 3-4):[1]

> "It is not true that there were substar
> from Stevenson to Eisenhower in the so-c
> wards of the big cities. Preliminary che
> voting pattern in these wards indicates a sn
> in the vote for Stevenson, but no corresp
> crease in the vote for Eisenhower. In ot
> there was some withholding of ballots.
>
> "There was a heavier shift in some of
> wards, but not in those which are effectively
> either politically or in unions. The heavie
> were in the South where Negro voters ar
> against the guns of the Dixiecrats. The
> change, or only a slight one, in cities like P
> where labor organization is excellent, and i
> sible to explain the issues fully to the p
> directly affected.
>
> *"Adding It All Up"*
>
> "So where do we come out? The returns
> clearly, it seems to us, that labor's politica
> tions, spearheaded by the AFL-CIO Co
> Political Education (COPE), proves out h

[1] The "COPE Report" containing the material here
produced verbatim in the January 1957 "Firemen
Journal" (Tr. 417).

We could have been swept off our feet in Congress had we not been organized. Our people might have stayed home in droves in the Presidential race except for our register-and-vote campaigns. There might have been a truly disastrous swing in the Negro vote if labor had not been on the job explaining the real issues.

"It looks as if the big city political machines have broken down in most places, and that labor political organization is rapidly taking their place. It certainly looks as if the "Solid South" is smashed beyond repair, and that people will be listening to liberal appeals and not to the voice of tradition. All of these things are good from labor's point of view, and if we keep on building up an effective political organization, we can push events farther in the liberal labor direction.

"So we get back to our knitting. We get back to the *registration* drive, which will start again soon, and must be made even more effective on a year-'round basis with permanent Good Citizenship Committees as AFL-CIO President George Meany has suggested. We get back to *educational* work explaining the votes and issues. We get back to the *dollar drive*, which provides the wherewithal. And we get back to *getting out the vote* in the show-down—in 1957 it is the local elections and a few statewide races, all very important for good local and state government, and for building up liberal political strength."

The "COPE Report" for June 1957 states (Tr. 486):

"WHAT IS A JUDGE TO US?"

"Ever hear of a labor injunction? Our people walking the bricks carrying placards, handing out leaflets at the plant gates. Judge hands down the injunction for the Company, clearing the streets. The scabs go through, your job is done.

"That used to be standard. With Taft-Hartley on the books, in case of bad times, it could get to be standard again. *That puts it up to the judges. Fortunately, a good many of them are elected.* To elect good judges our people must vote. To vote they must.

register. This is a job for all year round" (italics added).

Thus, it can be seen that COPE would make the willingness or unwillingness of a candidate for judge to approve mass picketing in labor disputes a political issue. This is politics of the rankest sort.

Another of COPE's publications is entitled "Notes From COPE" (Tr. 470-480). Basically, "Notes From COPE" is intended to support the AFL-CIO's effort to identify the political interests of racial minorities with its own political objectives. "Notes From COPE" is published and distributed with AFL-CIO general dues funds (R. 148).

In addition to these publications of its own, COPE's propaganda is regularly published in "AMERICAN FEDERATIONIST", the monthly official publication of the AFL-CIO (R. 124-125). Most issues of "AMERICAN FEDERATIONIST" (Tr. 797-869) contain at least one article by the director of COPE, or a member of his staff, as well as numerous other articles and editorials dealing with the AFL-CIO's ideological, political and legislative objectives.

The Committee on Political Education is active on the state level as well as at the national level. COPE's director says that COPEs have been organized "in every city and certainly every state of the Union. We are now down to the township and borough level . . . " (Tr. 280).

In general, the state COPEs carry on the same activities at the state and local level as the national COPE does at the federal level (R. 140).

The state COPE is financed in the same manner as the national COPE (R. 139) with one notable exception. The state COPE frequently levies a direct per capita tax upon the members of all the local unions affiliated with the state AFL-CIO; this procedure is contained in the proposed by-laws for state COPEs recommended by the national COPE (R. 139-140), and is in effect in Arizona, Delaware, Maryland, Missouri, Montana, Oklahoma, Virginia, and possibly other states (R. 140).

"LABOR."

"LABOR's" masthead states that it is the "official Wash ington weekly newspaper" of its labor union owners an that "it is not conducted for profit and does not accep paid advertising of any kind" (*e.g.* Tr. 508). The masthea also states that "LABOR's" "editorial policy is determine by a committee selected annually by the chief executive of the 'associated organizations.'"

Free space in "LABOR" has been, is, and will be use to induce contributions to the funds of Railway Labor' Political League and of the AFL-CIO Committee on Politi cal Education (R. 189). Substantial portions of each issu of "LABOR" are devoted to legislative subjects, and durin election periods, to political subjects dealing with the elec tion of candidates to public office (R. 189). The reportin in the newspaper "LABOR", including the news column thereof, is non-objective and is designed to influence th readers of "LABOR" toward the particular political philos ophy espoused by that publication (R. 189-190).

The legislative members of one major political party ar mentioned favorably in the columns of "LABOR" far mor often than are the legislative members of the other majo political party (R. 190).

During the general election campaigns of 1956, "LABOR' published seventeen special editions featuring eighteen can didates for the Congress of the United States (Tr. 551-553 555-560, 562-568). These special editions were published without cost to the candidates involved (R. 190). "LABOR' published and distributed 727,000 copies of these issues and of these, less than one-half went to "LABOR's" regula subscribers in the states in which such candidates wer running (in lieu of the regular editions of "LABOR" fo the date involved), while more than one-half were distrib uted to members of the labor union defendants who did no subscribe to "LABOR", as well as to members of the genera public (R. 190). The special editions referred to above with a single exception, supported the members of the sam major political party.

It was stipulated that similar "special editions" were being prepared for the 1958 general election campaigns at the time the stipulation was executed on August 14, 1958 (R. 190-191).

Examination of the positions taken by the newspaper "LABOR" on legislative issues demonstrates that it supports the same legislative and economic objectives which are supported by the AFL-CIO and its Department of Legislation as typified in "Labor Looks at the 85th Congress" (see pp. 30a-31a, below).

Virtually every column and every story of every issue of "LABOR" "plugs" its ideological "line" either openly or subtly. Even a casual reading of a few issues of this newspaper will convince one that it is not designed for the dissemination of news, but is purely and simply a propaganda organ (R. 189-190).

The political purpose of "LABOR" is frankly admitted. The editor, Reuben Levin, states (Tr. 278):

> "LABOR is now the most widely circulated and most influential weekly paper of its kind on this continent, with a circulation of approximately 850,000 a week. It has also played a mighty role in many election campaigns, and it will undoubtedly do the same this year."

The Railway Labor Executives' Association.

The Railway Labor Executives' Association had its genesis in a committee organized to support a "very thorough and comprehensive plan for the operation of the railroads under government control . . . known as 'The Plumb Plan of Government Ownership and Operation of the Railroads.'" That committee in 1926 became the RLEA (Tr. 716, p. 6).

A principal activity of the RLEA is in the field of federal legislation. RLEA, as an organization acting through its Chairman, Secretary-Treasurer, other members and employees, actively attempts to influence all kinds of legis-

lation in which the members of RLEA (the chief exec
officers of appellants and certain other labor unions) bel
the members of their unions have an interest (R. 179).
president of the appellant Brotherhood of Maintenanc
Way Employees, in a report to the members of that u
dated June 16, 1958, stated (Tr. 267):

> "Our activities through the non-operating organ
> tions differ from those in which we engage through
> Railway Labor Executives' Association in that
> principal function of the non-operating groups [
> Employees' National Conference Committee; Sevent
> Co-operating Railway Labor Organizations which
> gotiated the union shop agreement—R. 205, 215]
> that of negotiating for wages, working conditions
> fringe benefits *while the Railway Labor Executi*
> *Association functions in a broader area and conce*
> *itself with many problems not directly related to*
> *lective bargaining*" (italics added).

RLEA's attempts to influence are through personal c
tact and persuasion of Congressmen and U. S. Senat
(R. 179). RLEA's activities are financed by assessme
upon the labor union defendants, and other members
RLEA as represented by their chief executive offic
which are paid out of the general dues funds of s
labor organizations, contributed in part, of course, by i
vidual appellees herein (R. 180-181). Such assessments
1957 amounted to in excess of $175,000 (see tabulation at
180-181).

The Chairman of the Railway Labor Executives' As
ciation, Mr. G. E. Leighty, in a report to the members
his own union, the Brotherhood of Railroad Signalm
one of the appellants, summarized the activities of RL
as follows (Tr. 275):

> "A number of the standard railroad labor orga
> zations maintain full time national legislative offic
> in the city of Washington. Most of them who do t
> also maintain state activities which parallel on a st

level, in large part, the work of the national office. It has been the practice for many years when the associated organizations have a legislative goal in Washington . . . for all the organizations who can do so to supplement their legislative representation in Washington by assigning additional and temporary representatives. This includes those organizations which do not have regular representation in Washington. These additional men, together with the regularly assigned national legislative representatives, form a team or crew that works cooperatively in explaining the bills we want enacted and in marshalling support in the offices of Senators, Congressmen and elsewhere as the need arises. The RLEA office in Washington usually acts as a focal point for this concerted activity—as a sort of command post . . ."

AFL-CIO Department of Legislation.

The Department of Legislation of the AFL-CIO is under the direction of Mr. Andrew J. Biemiller (R. 125) who is responsible directly to the president of the AFL-CIO (R. 125-126). It is financed entirely out of the general funds (derived from dues) of the AFL-CIO (R. 126). Under Mr. Biemiller are four legislative representatives and a technical and clerical staff of eleven employees, all of whom are compensated from the dues funds of the AFL-CIO (R. 126). Mr. Biemiller and the four legislative representatives are registered lobbyists (R. 126).

From the merger of the AFL and the CIO on December 5, 1955 through June 30, 1956, the end of the first fiscal period of the merged organization, the Department of Legislation incurred expenses in the amount of $92,343.01; during the fiscal year July 1, 1956 through June 30, 1957, such expenses amounted to $139,071.47; from July 1, 1957 through June 30, 1958 such expenses were $175,743.97 (R. 126). All of the above expenses were paid out of the general funds of the AFL-CIO (R. 126), and thus are financed by the dues required of individual appellees and the class they represent.

The purpose of the Department of Legislation i
mote the legislative program of the AFL-CIO and
support for some, and opposition to other, propos
lation, principally federal legislation (R. 126-127
the duty of the Department of Legislation with re
such proposed legislation to attempt actively to se
passage of legislation favored by the AFL-CIO an
pose legislation opposed by the AFL-CIO (R. 127)

The legislative program of the AFL-CIO, which
partment of Legislation seeks to promote, is not
to legislation or proposed legislation directly a
unions or union members as unions or union memb
covers a broad range of other issues of interest not
union members but to citizens generally (R. 129
range of this program is set forth in a publicatio
Department of Legislation entitled "Labor Looks
85th Congress" (R. 129). That document (Tr. 38
tains a summary of the "record" of the first sessio
85th Congress and lists legislative items on the ag
the legislative committee for the second session of
Congress. As to the first session of the 85th Congr
booklet mentions prominently, in addition to s
"Labor Legislation", the following: "the Administ
'tight money' policy", a resolution "to conduct a s
national monetary and credit policies"; an investig
financial policies by the Senate Finance Committee;
aid to school construction, welfare plan disclosure
housing; veterans' housing; area redevelopment; po
spection; the Civil Rights Act; a proposed change
cloture rule; the Jencks bill to protect F. B. I. files;
in the McCarran-Walter Immigration Act; variou
involving the support of public power as opposed to
power—Hells Canyon being the most prominent; a
ous issues involving world affairs. The last two p
"Labor Looks at the 85th Congress" list the followin
ures which the Department of Legislation of the A
says it has called upon the "Congress to work vig
and speedily to complete" (Tr. 394, p. 31-32): (1) c

overhaul of the Taft-Hartley Act; (2) extension of the p
tection of the Fair Labor Standards Act and an increas
the minimum wage to at least $1.25 an hour; (3) major
provements in the social security system; (4) federal aid
school construction; (5) welfare and pension benefit p
disclosure; (6) strengthening of the Walsh-Healey
Bacon-Davis Acts and other labor legislation; (7) reduct
of federal income taxes for low and middle income famil
and small business, and closing of the loopholes by wh
many wealthy persons and corporations evade paying th
just share of taxes; (8) a program to provide assista
for areas of chronic unemployment; (9) authorization
federal development of the high-level Hells Canyon Da
for self-financing for TVA; and for expansion of the p
gram to apply atomic energy to peacetime uses; (
modernization of unemployment compensation system; (
a housing program which will result in construction of
million units a year, plus expanded low-cost public hous
and urban renewal; (12) federal protection for natural
consumers; (13) a comprehensive farm program, embr
ing price supports, conservation payments, low inter
loans, and rural electrification; (14) liberalization of
migration laws; (15) further improvement in civil rig
legislation for all our citizens, and equal protection of
laws; (16) federal workmen's compensation and saf
standards in atomic energy installations; (17) an adequ
pay increase for federal postal and classified employees.

Appellants' Official Journals.

Each of the labor union appellants at the grand lo
level publishes one or more official periodicals which
distributed to the members of such organization (R. 1
199, 190). The publication and distribution of such peri
cals is financed from dues paid by individual appellees
other union members (R. 190). The names of those publi
tions, which are descriptive of the organizations publish
them, are listed on p. 98 of this brief.

A substantial portion of the contents of thes publications is devoted to political and ideological including appeals for the contribution of funds to committees referred to above (R. 185). Appellan that the reporting in their Journals "is of a non- type and is designed to influence the readers thereo the particular political philosophy espoused by" t 189-190).

The political purpose of the "ELECTRICAL W JOURNAL", for example, is frankly admitted by ganization (Tr. 280):

> "In another vein, we wish to report that plete union with the stand of the American tion of Labor on political education, the IB used the *Journal* as an implement to promote gram of Labor's League for Political Educat published voting records, carried on campai funds and printed numerous articles and edit alert our people to become more vote conscio

The same thing is true, of course, of the other pe published by the labor union defendants, as the evi record shows.

Publications of the AFL-CIO.

It is impossible in the confines of this brief to in detail the political, legislative and ideological ca endorsed and supported by the "AFL-CIO NEWS", newspaper financed by dues required of individua lees (Tr. 953-993). Reference to any issue of this newspaper will, we believe, demonstrate its obvious san political approach in news, features and edito

The same is true of "The Federationist" the magazine published by the AFL-CIO with dues mo acted from individual appellees (Tr. 797-869).

II.

Appellants were not denied due process by the c below.

A. The Judicial Processes Below Were Completely Fair and Impartial.

Appellants' argument that they were denied proce due process in the trial court is a strange one in view c fact that it took five and one-half years to bring the ca decision. Their argument is completely without merit appears to be an attempt to prejudice this Court ag the Georgia courts (see *e.g.*, appellants' brief, pp. 1(They say (appellants' brief, p. 11) that the Superior C of Bibb County, Georgia, subjected appellants "to a of astonishing and oppressive procedural rulings, desc in Appendix A hereof which they claimed deprived the a fair opportunity to defend this case."

They complain (brief, pp. 105-106) that their answ the trial court was strick n for having been filed afte time it was due. They neglect to point out that they t selves recognized that the answer was late as the answe accompanied by a motion to permit it to be filed, conta excuses for not having filed it earlier. The appellants h right to a revision of the Georgia laws of procedure practice merely because their attorneys were over-conf of the merits of their demurrers and elected to rely them. And, as the record will show, their answer ar amendment to it were in fact on file, with appellees' cor at the time the case was tried (R. 89-97, 98-99, 100).

Appellants complain (brief, p. 106) that the trial entered an order for discovery which was too sweepi its terms, and allege that the Court did not comply certain procedural requirements of Georgia law. The trial procedures in this case were pursuant to Georgia In any event, appellants did not allege, an it is no fact, that any material produced by virtue of that orc in the evidence of record.

They complain of being driven into a '
lation" (brief, pp. 107-108). They say it
referred to above that made them enter into
(brief, pp. 107-108):

> "It is apparent, although the trial
> include it in the Bill of Exceptions, tha
> burdensome nature of that order, re
> fendants to produce truckloads of the
> rupt their operations, and furnish ex
> drove them into the one-sided stipula
> above, the trial court also refused to
> Bill of Exceptions, although it was i
> the trial court, that officials of organizat
> to this case were produced by these
> that although two to four lawyers rep
> defendants or those witnesses were pr
> the depositions, no objections were ma
> tions asked by plaintiffs and no cross-e
> conducted by any of them. R. 114, 12
> We believe this Court could take judi
> such a situation could not arise and
> the taking of six depositions, unless i
> advance, as part of the price of obta
> tion instead of complying with the o
> 1958, that we would not object to any
> would not conduct any cross-examina
> reading of those depositions will mak
> clear, and it is the fact, that the questi
> were written out in advance, with the
> that any departure from such prepare
> answers would terminate the negotiat

It is obvious that under the guise of as
to take judicial notice of certain matters,
insinuated extensive non-record and non-fac
in their brief. In view of such action by
are compelled to inform the Court of the

In the first place, there is no basis for
contention that the May 8th discovery ord
into the one-sided stipulation."

That order clearly provided for easy compli
pellants at their own offices, rather than elsew
order contained the following alternative provisi

> "It is Further Ordered that any of said
> in lieu of the production and testimony
> Georgia, may elect to have its production
> mony with respect thereto take place at th
> office of such defendant and before a dul
> commissioner of this Court at a time ag
> counsel for all parties, not later than June

Furthermore, it must be pointed out that the i
that order was made necessary by the fact that
counsel informed the Court as well as counsel for
appellees that appellants would resist efforts to
production of relevant documents and testimon
spect thereto through the cumbersome procedure
Georgia commissions for the taking of testimon
states, which commissions would have to be e
the courts of such other states.

The single examination which actually took p
the May 8th discovery order occurred at the o
of the appellants, took only two days and did
"truckloads" of records, as that appellant's w
able orally to describe its record system and th
only a minimum of essential records, and that wit
no inconvenience.

If the May 8, 1958, order were invalid, as
contend, they could have refused to obey it, and
or invalidity could have been determined by
priate court, as such determination ultimately
when the Supreme Court of Georgia rejected
contention appellants are advancing here, a
tion that should be final as to any state prac
of appellants' argument.

Similarly, if appellants believed that they were
fault when they delayed three and one-half ye
filing their answer in the state court, they

proceeded upon that belief and that qu.st
been decided ultimately by the appropriate
The appellants suggested the stipulation
the May 8, 1958, order, but because couns
vidual appellees were scheduled to take
of appellants' chief Washington agent in
tributing political largesse. It was at tha
that emissaries from RLPL, an agent of
approached counsel for individual appellee
gestion that, if that man's deposition we
important national political figures would be
a difficulty which could be avoided by a stip
the circumstances individual appellees agr
expedite the proceeding (R. 162), being i
curing an adequate record for decision of
tions involved rather than in embarrassi
Appellees gave up substantial advantages
such a stipulation because it is clear that
facts of the appellants' political activities
more colorful than a stipulation.
The Court will notice that the truthfuln
ters stipulated is attested by counsel for
163, 164), and counsel do not now suggest
lation is not factual. That stipulation d
merely what appellees wanted—the preci
each factual stipulation was threshed o
parties, and the entire stipulation was a
months—from May 9, 1958 to August
three counsel for appellees across the tabl
or more counsel for appellants, and their a
zations, mostly in a hotel room in Washing
than 500 miles from the office of appellee
pellees insisted at all times that all items
tion be absolutely truthful. Since the depos
in this case were merely a device for aut
tain matters in the stipulation so far as
the organizations completely dominated by
RLEA, RLPL and MNPL, and for placin

information concerning the activities of the
and its subordinate organizations which have l
participation outside appellants, certainly it was
that there be an understanding in advance as t
questions would be and what would be the answ
nesses thereto, but in each case the witness
oath and swore to the correctness of his ans
pellants have made no attempt to attack the tr
of their own witnesses. Certainly it could not
that the Comptroller of the AFL-CIO, the
Director of the AFL-CIO, and the Director of C
friendly to appellees!

Appellants have not attempted to suggest th
swers of the witnesses involved would have be
wise different if the same questions had been p
on deposition in the absence of negotiations
the stipulation.

The appellants complain that they restricted
with respect to the offering of evidence (appell
p. 108). So did individual appellees. It was
lants who most strenuously insisted on this
in order to keep appellees from digging even d
the appellants' activities. Appellants claim tha
dence at trial was unbalanced (brief, p. 108).
it is true that appellees only "scratched the s
appellants' political and ideological activities, but
lation includes many matters of fact which
attorneys insisted be incorporated. There is n
but that the stipulation was hammered out at ar
—by adversaries across the table—and is there
more reliable than testimony of witnesses who
subject to "spur of the moment", unintended, in
The stipulation is not subject to any of the d
gested by appellants.

Appellants claim that counsel was denied ade
for preparation of oral argument (brief, pp.
That clearly is not the case. The record shows
ment did not take place until a week after trial

It is not usual for argument to be deferred for a week after a trial—generally argument begins the moment the evidence is completed. Furthermore, as appellants have pointed out, counsel for the appellants knew three months in advance of trial what most of the evidence would consist of. They knew 15 days in advance of trial what the remainder could consist of (R. 163). Furthermore, the case had, at time of trial, been pending nearly 5½ years; counsel for appellants in this case had participated in *Hanson* as well as other litigation in this field. Clearly they were not unprepared to argue this case a week after the close of trial. Nor do they now intimate how their argument could have been improved had they been allowed as much time as they requested. Trial courts in Georgia (as in most other states) do not postpone argument until a written record is available, as interminable delays would be involved.

The discussion above answers also appellants' contention that counsel for appellants had inadequate time in which to argue with respect to the proposed final order and decree of the trial court (brief, pp. 104-105). Appellants elsewhere in brief have stated their legal objections to that order. They have not indicated any objections which they did not note at trial. In any event, the order and decree is now before this Court for review on the merits—and appellants are now free to advance any and all arguments which they wish with respect thereto. But we submit that it is not becoming of appellants to cast aspersions upon a trial judge who demonstrated his impartiality by sustaining all of appellants' objections when the case first came before him in 1957 on motion to strike.

B. This Suit Was Properly Brought as a Class Action.[1]

This suit was brought as a class bill on behalf of the named petitioners and "in behalf of others similarly situated" (R. 17-18).

Georgia Code Section 37-1002 provides:

> "Members of a numerous class may be represented by a few of the class in litigation which affects the interest of all."

In *The Macon and Birmingham Railroad Company* v. *Gibson*, 85 Ga. 1, 11 S. E. 442 (1890), an action for injunction involving the routing of a railroad, where two citizens brought suit on behalf of all the inhabitants of a municipality, the Supreme Court of Georgia held (85 Ga. 23-24):

> "A further question is whether some of the citizens of Thomaston, suing in behalf of themselves and all their fellow-citizens of the town, will be sufficient as parties plaintiff in this proceeding, or whether all the citizens must join as such plaintiffs. The interest being common to all as a community, and the citizens being numerous (of which fact we can take judicial notice from public statistics), we think the case is provided for by a well-recognized rule which has long prevailed in equity, and that some, as representatives of the class may sue for all. Story's Eq. Pl. § 94 *et seq.;* Mitf. Eq. Pl. marg. p. 167 *et seq.;* Spence Eq. Jur. 656; 1 Daniell Ch. Pr. 234, 237; Pomeroy Rem. & Rem. Rights, § 388 *et seq.;* Hawes on Parties, § 92, 1 Pomeroy Eq. Jurisprudence, § 251, 255, 269, 274; Phillips v. Hudson, L. R. 2 Ch. 243; Comrs., etc. v. Glasse, L. R. 7 Ch. 456; Smith v. Swormspedt, 16 How. 302. It is

[1] This general question goes to the right of named appellees to represent unnamed non-operating employees "similarly situated" even though employed in other crafts or classes. Appellants' argument is framed as an attack both upon named appellees as proper class representatives, and also upon their right to sue any appellant union where no named appellee is employed in a craft or class represented by that union for collective bargaining purposes.

true that as only two of the citizens have become parties, it is rather a small representation of the whole community; but considering the publicity of the case and of the interest involved in it, and the fact that the suit is located in Upson County and will be tried (if tried at all) at the county town, which is the town whose citizens are interested, there can be no cause to apprehend that the two plaintiffs on the face of the petition will be disposed, or if so disposed, allowed to misrepresent the community in whose behalf they have brought this suit. No doubt it is somewhat discretionary with a court of equity as to how many representatives of a class will, or ought to be, regarded as a fair representation of the whole class in the given instance. We simply rule that this is a proper case for some of the citizens to represent all, and that the number of representatives, though the smallest that could be recognized, is not, as matter of absolute law, insufficient."

The trial court held in the instant case (R. 101):

"The Court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants."

That finding was within the trial court's general competence. It was excepted to by the appellants (R. 229-230

Bill of Exceptions, pars. 4 and 5). The trial court's finding was sustained by the Georgia Supreme Court (R. 263-264). The question of whether this a proper class action, both as to plaintiffs and defendants, being one of state court procedure, it was peculiarly within the province of the Georgia Supreme Court to give the final answer as it did.

The class action question is mentioned on page 20 of appellants' brief:

> "Another deprivation of due process was entering the judgment in favor of an amorphous 'class' the components of which cannot be determined without reading their minds and thus subjecting appellants to contempt for conduct they could not have known would violate the injunction when they engaged in it. The sustaining of a class action further denied appellants due process by subjecting all but one of them to suit by persons who had no standing to sue them, that is, by persons not affected by anything any but one of the appellants has done or might do."

The Court will notice in that "summary" of appellants' argument that appellants recognize that the only question for this Court is whether a finding that this case is a class action infringes appellants' constitutional right to due process. The Court is also referred to page 8 of the jurisdictional statement where the question presented to the Court is framed exclusively in constitutional terms.

A short answer to the contentions of the appellants is that they have stipulated to the contrary and are now in no position to say that the class action is improper either as to plaintiffs or defendants. Thus, appellants stipulated (R. 166-167) as follows:

> "The plaintiffs and intervening plaintiffs fairly and adequately represent for the purposes of this litigation the interests of the employees and former employees of the railroad defendants specified in the two preceding paragraphs, . . . these being all those

> employees or former employees of the railroad de
> dants affected by and opposed to the union s
> agreement who also are opposed to the use of
> periodic dues, fees and assessments which they h
> been, are and will be required to pay to support i
> logical and political doctrines and candidates and
> islative programs set forth in this Stipulation
> Facts . . . ."

The "employees and former employees . . . specifie
the two preceding paragraphs" are those employees
were compelled "to become members of the *defe*
labor union organizations" or were discharged becaus
their refusal to become "members of the *labor union*
fendants" (italics added).

It thus appears that appellants have stipulated that
class of plaintiffs is appropriate and is fairly and
quately represented, and that the class consists of
ployees represented by all of the "defendant labor u
organizations." Appellants cannot properly contest th
matters before this Court in the face of their stipulat

A further short answer to the argument of the ap
lants is that it has no materiality in view of the fact t
even if the class were not proper, the court below
unquestioned jurisdiction to adjudicate the rights of
individual appellees. Thus, the basic legal issues w
before the lower court, and are now properly before
Court, and once this Court has spoken it will make
difference what *persons* are bound, since all *courts*
be bound to apply the same principles to all persons si
larly situated.

The Court is urged to examine closely the actual a
ment presented by appellants on the "class action" p
(brief, pp. 65-79).

In the general introduction to the argument, the st
ment is made (appellants' brief, pp. 65-66):

> "It is obvious that a class suit, in which a judgm
> may bind absent persons, cannot be brought unless

> requirements of due process with respect to such persons are satisfied. *Smith* v. *Swarmspedt*, 16 How. 288, 301-3, 14 L. Ed. 942; *Macon and Birmingham Railroad Co.* v. *Gibson*, 85 Ga. 1, 24; *Hansberry* v. *Lee*, 1940, 311 U. S. 32, 61 S. Ct. 115, 85 L. Ed. 22."

With that general statement we are in thorough agreement.

But, as examination of the cases cited will show, the courts were discussing due process as to the *absent persons*.[1] Those cases did not involve a question as to due process to be accorded the parties actually present. The labor union appellants, who have claimed a denial of due process, were actually present at all stages of this proceeding. They have had no rights adjudicated in their absence about which to raise due process questions.

Smith v. *Swormstedt*, cited by appellants, strongly supports the class action procedure in this case. There the Court stated (*op. cit.*):

> "The rule is well established, that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. (Story's Eq. Pl., secs. 97, 98, 99, 103, 107, 110, 111, 116, 120; 2 Mitf. Pl. Jer. Ed., 167, 2 Paige, 19; 4 Mylne & Cr., 134, 619; 2 De Gex & Smale, 102, 122.)
>
> "*Mr. Justice* Story, in his valuable treatises on Equity Pleadings, after discussing this subject with his usual research and fullness, arranges the exceptions to the general rule, as follows: 1. Where the question is one of a common or general interest, and one or more

[1] In *Hansberry* the Court stated the question as follows (311 U. S. 37): "The question is whether the Supreme Court of Illinois, by its adjudication that petitioners in this case are bound by a judgment rendered in an earlier litigation to which they were not parties, has deprived them of the due process of law guaranteed by the Fourteenth Amendment."

> sue or defend for the benefit of the who
> the parties form a voluntary association
> private purposes, and those who sue or
> fairly be presumed to represent the ri
> terests of the whole; and 3. Where the par
> numerous, and though they have separate
> interests, yet it is impracticable to bri
> before the court."

Classifications 1 and 3 both fit this case. T
above also reveals the inappropriateness of
statement (brief, p. 73) that "If the Court ca
cate the [money] claims of the entire class, th
device is not properly used."

The Court in the *Smith* case went on to sa
303):

> "In all cases where exceptions to the
> are allowed, and a few are permitted to sue
> on behalf of the many, by representation
> be taken that persons are brought on the
> representing the interest or right involve
> may be fully and honestly tried."

Appellants do not argue that interests of
members of the class represented by the in
pellees were inadequately protected, or that,
the case was not "fully and honestly" tried.
argue, apparently, that such absent member
out of the case. The plain fact is that the appe
which complain of lack of due process as to
predicate their claim upon alleged rights of
sented by the individual appellees. If any of
employees feel that they have been inadequ
sented, that question will arise, if ever, in a
where they, not the appellants, place that
issue, as in *Hansberry*.

The Court's attention is called especially
court's finding and decree (R. 107):

"This decree and order shall operate as an ad
tion of the basic common rights asserted by pla
in their own behalf and on behalf of other emp
of the defendant railroads similarly situated, an
not constitute any adjudication of claims for mo
damage, or for refund of dues, fees or assess
if any, of any members of such class, who ha
made an individual personal appearance in this

It seems clear that this Court does not consider
essary that all members of a class be definitely iden
in advance in order to maintain a class action. F
ample, in *Felter* v. *Southern Pacific Co.*, 359 U. S
329-330 (1959), the Court stated that it would not b
essary to determine "how many other employees w
fact similarly situated with petitioner" in order to r
the dispute, as the matter could be determined as
the extent necessary by the trial court at a later ti
Frasier v. *Board of Trustees*, 134 F. Supp. 589, 59
(M. D. N. C. 1955), *affirmed per curiam*, 350 U.
(1956) the Court apparently regarded as sufficientl
nite a class which consi ted of "all Negroes who p
the qualifications for entrance to the University" a
Negroes who subsequently apply for admission." Se
the following cases involving class actions where the
did not consider it necessary to determine whether
those in the "class" desired the relief being sought
plaintiffs: *Evers* v. *Dwyer*, 358 U. S. 202 (1958); *Br*
Board of Education, supra; Steele v. *Louisville & N*
supra; Tunstall v. *Brotherhood of Locomotive Firem*
Enginemen, 323 U. S. 210 (1944); and *Howard* v. *Br*
hood of Railroad Trainmen, 343 U. S. 768 (1952).

With respect to appellants' contention (brief, pp.
that plaintiffs are without standing to sue any uni
cept the one that represents their class, we subm
they are confusing "class representation" in a col
bargaining sense with "class representation" in
cedural sense.

Furthermore, the evidence is plain tha
agreement, though it states that it shall b
separate agreement by and on behalf of e
hereto and those employees represented b
tion," nevertheless is *one* document. It
and executed as part of a single movem
appellants were represented by a single ne
"the Employees' National Conference Co
teen Cooperating Railway Labor Organiz
215), which had served a uniform notic
roads generally throughout the United
each of the nine railway company membe
ern Railway System (R. 35), which car
through an Emergency Board hearing re
ommendation that "all carrier parties be
a joint national agreement with the ser
tions represented through their Employee
ference Committee" (R. 35), and which j
to strike the Southern Railway System
agreement were not entered into between
fendants and the cooperating appellant
also Plaintiffs' Exhibit 438 (Tr. 944); P
441 (Tr. 948). Through their chief execu
lants all belong to, and help finance, RLE
which contributes heavily to RLPL, an o
the same constituency (R. 182-184), wh
heavily in political activities which the
lees oppose (R. 184-188, 306-314, 316). Th
two, part owners of "LABOR" (R. 189
extensively in politics (See pp. 26a-27a a
contribute heavily to the AFL-CIO (R. 31
pours a substantial amount of money
135-137, 319) which conducts political ac
by appellees (R. 141-152, 277-299, 315), a
partment of Legislation (R. 126) which
lative activities opposed by appellees (R

that the union shop
ll be *construed* "as a
of each carrier party
ed by each organiza-
It was negotiated
vement in which all
e negotiating agency,
e Committee, Seven-
anizations" (R. 205,
otice upon the rail-
ed States, including
mbers of the South-
carried the demand
g resulting in a rec-
before it enter into
seventeen organiza-
oyees' National Con-
h jointly threatened
em if a union shop
een the railroad de-
lants (R. 44). See
; Plaintiffs' Exhibit
xecutives, the appel-
RLEA (R. 179, 180)
n organization with
which participates
ue individual appel-
They are all, except
189) which engages
a above). They all
317-318, 319) which
ey into COPE (R.
activities opposed
, as well as its De-
h engages in legi-
(R. 217-230).

Clearly, it was appropriate for the trial cour
sideration of the above, to enjoin all the defe
enforcing the union shop agreements (R. 10
The other contentions of appellants in Part
brief simply relate to procedural questions
process implications whatever. On these poin
sion of the Georgia Supreme Court should be

**C. The Appellants Were Not Denied Due Proc
the Provisions of the "Findings, Conclu
Order, Judgment and Decree."**

Part VIII of appellants' brief is devoted to
tion that "Appellants were denied due proces
findings, a judgment and a decree being ente
the jurisdiction of the courts below" (brief,
That contention is completely without merit.
argument under Part VIII is almost exclusively
matters, many small and detailed, which the c
had the sole responsibility for deciding, but, i
this Court may be assured that there is no subs
ever to appellants' argument, we will discus
matters raised by them.

Brief, page 87. Appellants assert that there
identification of individual defendants.

The individual appellants were named as
originally solely for the purpose of securing
over the labor union appellants since, at that
labor unions could not be sued in Georgia as le
Those individuals, however, are identified as
bers or officers of the labor union appellants
lowing locations in the record: R. 18-20 (An
Petition); R. 23-29 (Amendment to Petition);
swer of Railroad Defendants); R. 158-159, 1
tion—appellants Jesse Clark, M. G. Schoch,
Harrison, Anthony Matz); R. 215-217 (signator
Shop Agreement: Earl Melton and L. C. Ritte
Vice President and General Chairman, respect
defendant International Association of Machini

J. MacGowan and Norman Dugger as Int
dent and General Chairman, respectively,
International Brotherhood of Boilerma
Builders and Helpers of America; John
D. Steadman as General President and G
respectively, of the International Brothe
smiths, Drop Forgers and Helpers; C. D.
Roberts, as General Vice President and G
respectively, of the Sheet Metal Workers
sociation; J. J. Duffy and B. R. Acuff,
Vice President and General Chairman, res
International Brotherhood of Electrical
Barney and W. W. Dyke, as General Pre
eral Chairman, respectively, of the Broth
Carmen of America; Anthony Matz and J
President and General Chairman, respect
ternational Brotherhood of Firemen,
Roundhouse and Railway Shop Laborers;
rison and G. A. Link, as Grand Preside
Chairman, respectively, of the Brotherhoo
Steamship Clerks, Freight Handlers, Exp
Employees; J. P. Alexander and G. W.
Chairmen, Brotherhood of Maintenance of
F. G. Gardner and H. R. Duensing, as Ge
and as signatory, of and for The Order o
graphers; Jesse Clark and E. C. Melton,
dent and General Chairman, respectively,
hood of Railroad Signalmen of America;
as Secretary-Treasurer of National Orga
Mates and Pilots; William O. Holmes, as
urer National Marine Engineers Benefic
O. H. Braese and R. M. Crawford, as
General Chairman, respectively, of the
Dispatchers Association; and M. G. Schoch
as President and General Chairman, res
Railroad Yardmasters of America). Co
not correct to say that "there is nothing
record to show who the individual defend

International Presi-
ely, of the defendant
rmakers, Iron Ship
ohn Pelkofer and T.
l General Chairman,
otherhood of Black-
D. Bruns and W. G.
l General Chairman,
rs International As-
iff, as International
respectively, of the
cal Workers; Irvin
President and Gen-
rotherhood Railway
d J. H. Desotell, as
pectively, of the In-
n, Oilers, Helpers,
rs; George M. Har-
sident and General
nood of Railway and
Express and Station
V. Ball, as General
of Way Employees;
General Chairman,
r of Railroad Tele-
on, as Grand Presi-
ely, of the Brother-
a; John M. Bishop,
ganization Masters,
as Secretary-Treas-
eficial Association;
as President and
e American Train
och and H. E. Ivey,
espectively, of the
Consequently, it is
g anywhere in the
ndants are or what

authority they have or are otherwise in a
represent anybody," as appellants say.

Appellants disagree with the finding of th
that "the union shop agreement imposed a
employment or continued employment." They
imposed only a condition of *continued* empl
think the appellants are quibbling. It suffic
agreement imposes a condition of continued
Brief, page 88. Appellants here attack par
the trial court's findings on various grounds.

They say that there is nothing in the rec
that any of the labor organizations use fun
from plaintiffs (the individual appellees and
the class represented by them) to support p
paigns of candidates for federal office, both sep
collectively. That contention is inaccurate.

Paragraph 45 of the Stipulation of Facts stat

> "The money which has been, is being
> paid by plaintiffs, intervening plaintiffs a
> they represent as dues, fees, and asses
> been, is being and will be used in substan
> support candidates for the offices of Pre
> President, U. S. Senators, and Congressm
> campaigns as described elsewhere in this
> of Facts, and for direct contributions to
> for various state and local offices, as des
> where in this Stipulation of Facts."

As an example of such use of funds "sepa
single union, we refer to the material concer
which is simply a part of the IAM (R. 115-
299-306, 315). See also pp. 98-100, *supra*. The
clear with respect to the "collective" politic
of the appellants acting through RLPL (R.
187; 306-315), COPE (R. 123-124, 125-131,
315, 317-319, 322-323) and "LABOR" (R. 189

Appellants say there is no showing such can
opposed by plaintiffs or the class they represe

example, to the contrary: R. 176 (Stip., p. 19), R. 186 (Stip., p. 34), R. 188 (Stip., p. 44). Furthermore, it is not essential to the constitutional issues involved that an employee be opposed to a given candidate separate and apart from his opposition to having his money used to support such candidate. As between two candidates, both of whom an employee favors, he may wish that all of his support be placed behind one to the exclusion of the other.

The fact that such contributions might be in violation of the Federal Corrupt Practices Act has nothing to do with this case. It is clear that it would be a violation of that Act for the appellants to take dues money and donate it as a direct financial contribution to a candidate for federal office. But appellants use subterfuges.

Following enactment of the Taft-Hartley provision (18 U. S. C. 610) prohibiting contributions of union funds to candidates, the appellants, and cooperating labor organizations, established their political leagues and committees (see Plaintiffs' Exhibit No. 5—Preface—Tr. 391). The by-laws or constitutions of the leagues established by appellants are of record (Plaintiffs' Exhibit No. 3, Tr. 377—MNPL; Plaintiffs' Exhibit No. 431, Tr. 924—RLPL). COPE is simply a committee of AFL-CIO (R. 132). They are all operated on the assumption that, while coin (or other things of value) must not pass directly from the union to the candidate for federal office, it is perfectly legal for the union funds to be used to meet the general overhead of the leagues and committees and for what is termed "political education."

We have quoted at pp. 23a-24a above from a "COPE Report" showing how "political education" is simply an integral part of the political process designed to elect favored candidates or defeat those appellants oppose. Plaintiffs' Exhibit 3 (Tr. 379) contains the following (Tr. 383):

"7. *Question: Why is it necessary to have year-round money raising activity in the Machinists Non-Partisan Political League?*

Citizenship education and political activity, to be effective, must be continuous. It is important to get voters to understand issues and to know about candidates' records, and it is impossible to achieve this in a few short weeks before elections. Many issues are complex; they require study and discussion in order that intelligent resolutions and communications may be drafted. This means that Legislative Committees and Machinists League Committees must work continuously to increase popular understanding on issues and candidates and to create the necessary organizations and financial resources to elect Labor's friends and defeat Labor's enemies."

"How to Win", COPE's "Handbook for Political Education", Plaintiffs' Exhibit No. 15 (Tr. 416) states (p. 56):

"Political action is not just voting. COPE needs money to arouse people to the important issues, conduct registration drives, organize wards and precincts, prepare well ahead of time for the coming election campaign. The most effective political work is sometimes done between campaigns."

Speaking in July 1957 (an off-year for federal campaigns), Mr. James L. McDevitt, COPE's Director, stated (Plaintiffs' Exhibit 372, Tr. 863, pp. 8-9):

"Already COPE is getting requests for campaign funds from candidates who either are facing election battles this year or who recognize that a planned dollar spent early next year can do the job of ten dollars that are hastily thrown in during the heat of a campaign."

* * * * *

"The folks on the sixth floor of the AFL-CIO Building who constitute the staff of COPE are pretty friendly and cooperative people with generally jolly dispositions. About the only way you can get a frown

from any of them is to say: 'What are you all so busy about? Isn't this an off year?'

"It's like asking a frontline infantry soldier: 'Don't you know there's a war on?'" [1]

Yet Mr. McDevitt testified in this case that it is only during the last two months preceding the biennial elections for Federal office and for a short period of time after such elections that salaries and travel expenses of COPE's personnel and other operating expenses, except for space provided by the AFL-CIO, are paid out of ICF (R. 142).

With respect to RLPL, it has been stipulated (R. 182-183):

"Railway Labor's Political League was formed for the specific purpose of engaging in political activities dealing with the election of candidates to public office. The organization maintains two funds—one the so-called 'educational' fund and the other the so-called 'free' fund. Railway Labor's Political League received, receives, and will receive direct grants into its 'educational' fund from the general funds of the union defendants and from the Railway Labor Executives' Association. The monies in the 'educational' fund are used, except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas, and Iowa, to support candidates for public office at the State and local level; for publicity to support candidates on the national as well as the State and local level; for administrative expenses to operate Railway Labor's Political League generally (including the salaries of the paid employees of that organization, office expense, supplies, etc.); and for miscellaneous activities in supporting candidates (whom plaintiffs, intervening plaintiffs, and the class they represent op-

[1] Concerning the 1956 election, Mr. McDevitt said (Tr. 665, p. 17):

"We lost the presidential fight, not that it would have made any difference but you will recall that we were only in it for five weeks when the general executive board made their endorsement but we had been campaigning the year for friendly candidates and congressmen in the Senate."

pose) at the national, State or local level, such as transportation of voters to and from the polls, preparation and distribution of voting records, preparation and distribution of sample ballots, and the preparation and distribution of various types of political literature soliciting or influencing support for candidates for political office on the national, State and local levels.

"The administration, operation and maintenance of the 'free' fund activities of Railway Labor's Political League has been, is and will be financed and supported by direct expenditures from the 'educational' fund of Railway Labor's Political League derived from the general dues funds of the labor union defendants."

It is clear that appellees' moneys are being used for partisan politics even though the actual donations to candidates may come from so-called "voluntary" contributions. We do not know whether this payment of "overhead" out of dues money is in violation of the Corrupt Practices Act. We are certain that it violates the individual appellees' personal rights guaranteed by the Constitution.

The trial court's finding that the appellants "support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public offices" has ample support in the record. Paragraph 20 of the Stipulation of Facts states, in part (R. 176-177):

"A substantial portion of the periodic dues, fees and assessments required of plaintiffs, intervening plaintiffs, and the class they represent, or which will be so required, has been, is being and will be retained by, or remitted to, the individual local lodge of the labor union defendant to which each person paid and will be required to pay his dues, and has been, is being, and will be used . . . except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas and Iowa, to extend substantial financial support to candidates for public office in the executive, legislative and judicial branches of the state and local governments in the locality of the local union."

There is no need for the record to include a roster of
local lodges of the appellant unions. We believe each of th
is sufficiently identified as "the individual local lodge of
labor union defendant to which each person paid and
be required to pay his dues." The fact that none of the
fendants is a local lodge is quite irrelevant. The matter c
plained of is a finding with respect to the mechanism
which dues money is being used for political purposes.
appellants are unions, national in scope, having local lod
system committees and grand lodges.

Brief, pp. 88-89. Appellants assert there is no evidenti
support for the trial court's finding that the funds collec
from appellees are used "to impose upon plaintiffs and
class they represent, as well as upon the general pu
conformity" to "certain political and economic doctri
concepts and ideologies" and conformity to legislative p
grams.

This contention is discussed in Part II B 3 of this b
and needs no further elaboration here.

Brief, pp. 89-94. Appellants complain of the fact
the trial court found a commingling of appellants' fu
(derived from dues, fees and assessments) used for po
cal and ideological purposes with funds used for other p
poses, and the fact that the trial court's findings relat
all defendants.

There clearly is a commingling of appellants' funds
respect to the principal agencies of political and legi
tive activity and ideological indoctrination. Those agen
are: RLPL, which receives the bulk of its money f
RLEA (Stipulation, Par. 30, R. 183-184) which rece
its moneys from assessments against the appellant uni
(R. 180-181); "LABOR," and the appellants' indivi
periodicals, which receive funds from subscriptions paid
by the union appellants (with one exception) in vary
amounts (Stipulation, pars. 47, 48, 50; R. 189) and CO
financed by per capita taxes upon the union appellants (
other labor unions) on the basis of membership (R.

137, 178, 317-319, 322-323). Analysis of these four expenditure items alone was sufficient to convince the trial court of the futility of trying to segregate the amount of each employee's dues expended by the appellants for the proscribed purposes.

Similarly, in view of the uniform participation by all appellants in these four items, constituting the major portion of the political and ideological activities, there was no need to incorporate in the findings items peculiar to individual appellants. They all participate, as the record shows, in enough common activities to justify the trial court in treating them uniformly.

At page 91 of their brief, appellants state:

> "Paragraph 29 of the stipulation states that Railway Labor's Political League received direct grants into its 'educational' fund from the general funds of the union defendants. R. 182. But it is plain from the very next paragraph of the stipulation that except for trivial and insignificant amounts, obviously nothing more than corrections of bookkeeping entries, only three of the labor organization defendants have ever contributed money to RLPL's educational fund."

"Direct" grants by the three labor organizations mentioned surely are enough to support the precise language of the trial court. However, we are concerned that the appellants may be attempting, by emphasis upon the word "direct", to convey the impression that only three appellants pour money into RLPL. The record shows that RLPL receives large and substantial sums each year from RLEA (Stipulation, par. 30, R. 184). Stipulation, par. 27 (R. 180-181) shows the origin of those funds, including assessments levied upon each of the appellant unions, "paid out from the general dues funds of those organizations." The $75,000 which RLPL received from RLEA in 1957 (R. 184) amounts to more than 40% of the assessments by RLEA upon all appellants (R. 180-181). The use of RLEA as a conduit for channeling funds from the union appellants to RLPL does

not, in our opinion, make such grants indirect
relevant that the local lodges were not identifie
ber. RLPL received funds from the general du
of each of the appellant unions, and each unio
both national and local and system lodges. Th
individual and separate entities and organizati
pellants apparently would have the Court believe

Appellants seek to impugn the integrity of the
(brief, p. 92, footnote):

> "Obviously the trial court did not study
> record in this case in the fleeting instant b
> close of oral argument on the merits and the
> ment of his decision, or in the fleeting insta
> the close of argument on the proposed ord
> announcement that he would sign it as pres

The trial court had had the stipulation since Sep
1958 (R. 92)—nearly two months; the court had
evidence put into the record over a four-day spa
nearly a week longer to consider the effect of th
before oral argument, which itself took two day
the court was able to consider the evidence of n
in arriving at its final order.

Brief, pages 94-99. Appellants here discuss "t
As they point out in their first paragraph, ho
same matters were previously discussed and c

Briefly, they reargue their contention that Geo
policy is not violated, a contention covered *supr*
They also argue a proposition stated at page
their brief as follows:

> "Surely it cannot be argued that the courts
> have authority to overrule the courts of o
> as to what is the law in those states, and gi
> residents of those states which the court
> states have held such persons were not
> have."

Appellants then refer to various decisions in th
South Carolina, North Carolina, Virginia, and

This contention is a sham. It misstates the subst
the holding of the courts and decisions mentioned.

Only one of the decisions mentioned (*Allen et al.* v.
ern Railroad Company et al., 249 N. C. 491, 107 S
125 (1959)) involved the proposition that it is a vi
of the constitutional rights of an employee covere
union shop agreement for funds exacted from him
such agreement to be used for political and ideologic
poses which he opposes. In that case, the North C
Supreme Court did not hold that such rights we
violated—it simply interpreted *Hanson* as so holdi
deferred to what it considered to be this Court's d
We have already indicated that rehearing was gra
that case and that it is now pending on reconsideratio
decision of the trial court in the *Allen* case was agai
unions. The Supreme Court of North Carolina is sti
heard from in that case.

In the other cases,[1] the holding of the courts was
that the union shop agreement involved was aut
by the Union Shop Amendment, state law to the c
notwithstanding. Such rulings merely adopt this
view in *Hanson;* they do not reach the constituti
sues here involved.

We do not predicate our case upon the existe
right-to-work laws in all states where affected em
may be employed. Our case is predicated upon the
Rights which protects all Americans (and others
The state right-to-work laws in states on the S
Railway System[2] are of significance to this case

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[1] We have not seen the decision in the *Jarrett* case, ref
on page 95 of appellants' brief. If its holding is corre
scribed by appellants, it is immaterial to this case. We
argue that the only manifestation of governmental actio
nullification by the Union Shop Amendment of contra
laws. See Section IIA of this brief.

[2] Florida Constitution, Declaration of Rights, Sectio
amended;

Alabama Code Section 26-383 et seq.;
South Carolina Code Section 40-46 et seq.;

that they demonstrate that the union shop agr
the Southern Railway System is the result of t
type of governmental activity present in *Hans*
have shown above (Section IIA) there are n
manifestations of governmental action present i
also.

The union shop agreement at issue here is on
There is nothing in it that would permit its app
a single state, or group of states, only. It i
instrument affecting several states. Its effecti
pends on nullification of all possible contrary la
made and statutory) in all states served by th
Railway System. So far as the governmental a
tion is concerned, and that is the *only* aspect o
involving state laws, it is immaterial to the re
by a particular employee that the state of his
or employment, does not have a right-to-work l

Appellants' argument concerning paragraph
decree (brief, p. 96) has been covered in Section
brief.

Appellants also question (brief, p. 97) w
reparable injury was present. They disparage
of damages involved. The sums involved for eac
are substantial. And without the injunction,
ages could accrue, year by year, and become mu
Moreover, the alternative to payment of dues
of employment—clearly would be irreparable.

In their Petition for Removal in 1953, the u
lants alleged (R. 37):

> "Each of the plaintiffs has rights of e
> and seniority rights of a value greatly in
> Three Thousand Dollars ($3,000) which wo
> to him or her should he or she persist in

Tennessee Code Section 50-208 et seq.;
Virginia Code Section 40-68 et seq.; and
North Carolina, Session Laws of 1947, Chapter 3
General Statutes 95-78 et seq.

refusal to join or maintain membership in or
petitioning labor organizations . . ."

See also: *Pierce* v. *Society of the Sisters of*
Names, 268 U. S. 510, 536 (1925).

Appellants further assert that there is no othe
that could furnish any ground for injunctive re
avoidance of a multiplicity of actions of itself
ground for injunctive relief (Georgia Code Se
104). The finding that appellants would contin
complained-of acts (R. 104) is a finding that a mu
of actions would be involved and is adequate
injunctive relief.

Appellants complain of the inclusion of the i
defendants in the injunction (brief, pp. 87-90).
discussion at pp. 47a-49a above concerning these in

We see no need for discussion of appellants' c
(pp. 98-99) with respect to the proviso in the de
mitting its reopening. The proviso does them
We have already covered their complaint with r
the substantial relief granted by the decree.

Brief, pp. 99-100. Appellants also complain
trial court erred in awarding damages to certai
individual appellees because they could have avoi
age by posting a bond. While it is true that or
minimize damages, this rule does not require on
a bond. On the contrary, the appellants could have
such damages by not compelling the individual
to pay union dues pending this litigation. They
position to complain. The money they have be
the individual appellees who paid it as dues. T
suffers no damage in simply returning it. The st
negatives the idea of voluntary payments sugg
appellants (R. 203, 204).

It is clear from the above that the unions wer
nied due process by the trial court's order.